

## PROCEEDINGS SHEET

<u>S. NO.</u>	<u>DATE OF PROCEEDING</u>	<u>PAGE NO.</u>
---------------	---------------------------	-----------------

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

11.

Sr No	Particulars of Documents	Page No of the part to which it belong		Remarks
		Part 1 Content of Paperbook	Part 2 Content of File Alone	
(i)	(ii)	(iii)	(iv)	(v)
1.	O/R on Limitations	NA	NA	
2.	Listing Performa	A	A	
3.	Cover Page of Paper Book		A-	
4.	Index of Record of Proceedings		A-	
5.	Limitation Report prepared by registry		A-	
6.	Defect List		A-	
7	Note Sheet		NS1to NS....	
8.	Synopsis & List of Dates	B to P		
9.	Writ Petition (Civil) along with affidavits	1-40		
10.	<b>Annexure P-1</b> A copy of the order dated 11.8.2015 in W.P(C) 494/2012	41-55		
11.	<b>Annexure P-2</b> A copy of the order dated 15.10.2015 in W.P(C) 494/2012	56-72		
12.	<b>Annexure P-3</b> A copy of the Prevention of Money Laundering (Maintenance of Records) Second Amendment Rules, 2017 dated 01.06.2017	73-82		

13.	<b>Annexure P-4</b> A copy of the Master Direction - Know Your Customer (KYC) Direction, 2016 dated 25.02.2016.	83-141		
	<b>Annexure P-5</b> True copy of the order dated 23.09.2013 passed by this Hon'ble Court in W.P. (C) No.494/2012	142-146		
	<b>Annexure P-6</b> True copy of the order dated 26.11.2013 passed by this Hon'ble Court in W.P. (C) No.494/2012	147-149		
	<b>Annexure P-7</b> True copy of the order dated 24.03.2014 passed by this Hon'ble Court in SLP (Cri.) No.2524/2014	150-151		
	<b>Annexure P-8</b> A copy of the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 dated 26.03.2016	152-169		
15.	Application for interim reliefs	170-174		
16.	Filing Memo		175	
17.	Vakalatnama		176-178	

A

PROFORMA FOR FIRST LISTING

SECTION \_\_\_\_\_

The case pertains to (Please tick/check the correct box):

<input type="checkbox"/>	Central Act: (Title):	Prevention of Money Laundering Act, 2002
<input type="checkbox"/>	Section :	73(1) and 73(2)
<input type="checkbox"/>	Central Rule : (Title)	Prevention of Money Laundering (Maintenance of Records) Rules, 2005
<input type="checkbox"/>	Rule No(s):	9
<input type="checkbox"/>	State Act: (Title)	N.A.
<input type="checkbox"/>	Section:	N.A.
<input type="checkbox"/>	State Rule: (Title)	N.A.
<input type="checkbox"/>	Rule No(s):	N.A.
<input type="checkbox"/>	Impugned Interim Order: (Date):	N.A.
<input type="checkbox"/>	Impugned final Order/Decree: (Date):	N.A.
<input type="checkbox"/>	High Court: (Name):	N.A.
<input type="checkbox"/>	Name of Judge(s):	N.A.
<input type="checkbox"/>	Tribunal/Authority : (Name)	N/A
1.	Nature of matter:	<input type="checkbox"/> Civil <input type="checkbox"/> Criminal
2. (a)	Petitioner No. 1:	M.G. Devasahayam
(b)	e-mail ID:	N.A.
(c)	Mobile Phone no.:	N.A.
3. (a)	Respondent No. 1:	Union of India
(b)	e-mail ID:	N.A.
(c)	Mobile Phone no.:	N.A.
4. (a)	Main category classification:	
(b)	Sub classification:	
5.	Not to be listed before:	N.A.
6.	Similar/Pending matter:	<del>N.A.</del> WP494/2012
7.	<b>Criminal Matters:</b>	N.A.

A 1

(a)	Whether accused/convict has surrendered: YY	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(b)	FIR No.: N.A.	Date : N.A.	
(c)	Police Station:	N.A.	
(d)	Sentence Awarded:	N.A.	
(e)	Sentence Undergone:	N.A.	
8.	<b>Land Acquisition Matters:</b>	N/A	
(a)	Date of Section 4 notification:	N.A.	
(b)	Date of Section 6 notification:	N.A.	
(c)	Date of Section 17 notification:	N.A.	
9.	<b>Tax Matters:</b> State the tax effect:	N.A.	
10.	<b>Special Category</b> (first petitioner/appellant only): N/A		
	<input type="checkbox"/> Senior citizen > 65 years <input type="checkbox"/> SC/ST <input type="checkbox"/> Woman/child <input type="checkbox"/> Disabled <input type="checkbox"/> Legal Aid Case <input type="checkbox"/> In custody		
11.	Vehicle Number (in case of Motor Accident Claim matters):	N.A.	
12.	Decided Cases with citation:	N.A.	

Date: 04.10.2017

AOR for petitioner(s) / appellant(s)



(DEEPAYAN MANDAL)

(Code No.2485)  
(d.mandal@gmail.com)  
C-33, Lower Ground Floor,  
Nizamuddin (East),  
New Delhi -110013  
Mob: 9953808868

## SYNOPSIS

B

The present writ petition under Article 32 of the Constitution of India is being filed in public interest raising various issues including among others, protection of fundamental rights granted under Articles 14, 19 and 21 of the Constitution of India.

The core grievance of the Petitioners is the violation of basic human rights of the citizens of this country as a result of the unique identification project (UID Project) being made mandatory through Rule 9 of the Prevention of Money Laundering Rules, 2017 as amended by the Prevention of Money Laundering (Second Amendment) Rules, 2017 (hereinafter, "**Impugned Provision**") for the purpose of opening and maintaining bank accounts and for carrying any financial transactions equal to or exceeding Rs. 50,000 (Rupees Fifty Thousand Only).

By the Impugned Provision, an Aadhaar Number has been made mandatory for a) opening of bank accounts; b) making any financial transactions of and above Rs. 50,000; and c) foreign remittance to be credited into small account. Further, the existing bank account holders have been directed to furnish Aadhaar Number before December 31, 2017. Non-compliance of the Impugned Provision will result in the concerned bank accounts being ceased to be operational till the time the Aadhaar Number and Permanent Account Number (hereinafter, "**PAN**") are provided. Pursuant to the Impugned Provisions, every person is being compelled to possess an Aadhaar Number for not only

C

opening of a new bank account, but also for maintaining the existing bank accounts and making transactions through such bank accounts.

It is submitted that the impugned provision is unconstitutional for the following primary grounds:

**A. IMPUGNED PROVISION VIOLATES THE RIGHT TO PRIVACY WHICH IS NOW RECOGNISED AS AN ESSENTIAL PART OF LIFE AND PERSONAL LIBERTY.**

The impugned provision, by compelling surrender of core biometric information, all three principal aspects of privacy :

- a. Privacy of Person: It forcibly invades bodily integrity of an individual which forms an inalienable part of his human personality.
- b. Informational Privacy: Mandatory authentication by way of Aadhaar enables the Government to collect, maintain and track private information of an individual.
- c. Privacy of choice: Collection and surveillance of private information of an individual, enables the Government to directly and indirectly affect the choices of an individual, thereby violating his autonomy over fundamental personal choices.

**B. IMPUGNED PROVISION DEPRIVES LIFE/PRIVACY AS A RULE RATHER THAN AN EXCEPTION**

Article 21 states that a person would not be deprived of his life and personal liberty "except according to procedure established by law".

Therefore, as a rule, a person is constitutionally and naturally entitled to enjoy his life, personal liberty and privacy peacefully. Only if he steps into the zone of exception, can he be deprived of his life and personal liberty. The impugned provisions deprives every law abiding and

D

peaceful resident of India, of their right to privacy as a rule. It, therefore, does not just limits but takes away completely, the right to life/privacy completely.

### C. IMPUGNED PROVISION IS NOT A VALID LAW.

The impugned provision has been enacted without legislative competence rendering it void ab initio, being *ultra vires* in nature as:

- i. The impugned provision, being a subordinate legislation, could not have changed the otherwise consensual scheme of Aadhaar Act into a mandatory scheme thereby overturning the entire legislative policy of Aadhaar.
- ii. A subordinate legislation as impugned provision cannot compel surrender of the inalienable right to privacy as it would then be overstepping into the essential legislative functions of the Parliament.
- iii. The impugned provision has exceeded the mandate of its parent sections under the PMLA Act by mandating ceasing of operation of Non – Aadhaar holders' bank accounts.
- iv. Ceasing operations of accounts having legitimate funds also runs contrary to the object of the act i.e "*An act.....to provide for confiscation of property derived from, or involved in, money-laundering*".
- v. A subordinate legislation as the impugned provision cannot indirectly import a scheme of a 'money bill' legislation, such as the Aadhaar Act, into the legislative scheme of an ordinary statute, such as the PMLA Act.



E

**D. IMPUGNED PROVISION VIOLATES ARTICLE 14 OF THE CONSTITUTION OF INDIA**

The Impugned Provision is violative of Art 14 of the Constitution as:

- (1) A classification of those who are willing and those unwilling to part with their core biometric information is irrelevant vis-a-vis their right to possess bank accounts.
- (2) Forcing every individual to surrender his core biometrics unfairly equates him to a criminal for whom, universally, such treatment is normally reserved.
- (3) Ceasing operations of legitimate accounts also unfairly equates legitimate funds to crime proceeds which are to be attached under the PMLA Act. In fact, attachment of crime proceeds are subject to a hearing; a right unavailable for legitimate funds.
- (4) Linking of Aadhaar and Bank accounts defeats the object of the PMLA Act itself in that it allows real money launderers to launder crime proceeds by executing identity thefts. Such thefts are highly probable considering the nature of information and its storage.

**E. MAXIMUM SURVEILLANCE**

The consolidated legislative scheme of the Aadhaar Act enables the Government to carry out clandestine en-masse surveillance into the private life of its subjects without their consent. The Government, can collect, track and retain information of every benefit or service, availed by an individual by Aadhaar authentication, thereby destroying his privacy completely.

F

Further the nature of the information and the manner of its storage makes the invasion of privacy invisible, thereby eliminating any effective limitation on state surveillance.

This threatens the very Constitutional scheme of checks and balances. It arms the executive with unfettered power to adversely influence all vital threads of constitution, including fundamental rights, separation of power, independence of judiciary, federal Government, democracy, secularism etc., paving the way for an authoritarian state.

State surveillance also violates an individual's Freedom of free movement as held by Hon'ble Justice Subbarao in his now acclaimed dissent in ***Kharak Singh Vs. State of Uttar Pradesh, (1964) 1SCR 332***

Such a restriction on an individual's freedom is therefore arbitrary, excessive and disproportional as in order to achieve the end of authentication of bank account holders, the provision is seeking to invade the bodily integrity and dignity of every citizen as well as subject them to state surveillance despite being a law abiding citizen. There is no compelling state interest to justify such a wide spread deprivation of privacy which threatens the scheme of the Constitution itself. Parallel identification processes through PAN, Official Validity Documents, KYC norms etc. achieve the same purpose with equal efficiency, if not more without violating the privacy of an individual.

#### **F. NO SAFEGUARD**

To make matters worse the Government has outsourced virtually every facet of the Aadhaar scheme to international defence contractors and multinational corporations who have the power and control to, *inter alia*,

G

access, manipulate, transmit overseas, remove and commercially exploit the data. Virtually no power rests with the Government. There are therefore, no procedural or technical safeguards to protect the personal sensitive data of 1 billion people thereby risking massive threat to national security.

**G. THE IMPUGNED PROVISION SEEKS TO RELY ON A FLAWED SYSTEM, WHICH RESULTS IN EXCLUSION RATHER THAN INCLUSION OF INDIVIDUALS**

Further the biometrics as a technology is unreliable and as applied by the Respondents is serving as an instrument of exclusion depriving persons who are otherwise entitled to financial and other subsidies, benefits and services from receiving these entitlements. Going by the stand of UIDAI itself, the number of cases where de-duplication resulted in the rejection of an application for an Aadhaar number is to the tune of 9 crores out of around 100 crore enrolments. The number 9 crores is just a little less than the population of the State of Bihar and twice the population of Odisha (as per the 2011 census). This shows that every 10<sup>th</sup> person is not being issued an Aadhaar number (though applied for) because of the flawed biometric technology being used. Further, one study using official data shows that the proportion of "false positives" i.e. duplicates being shown erroneously is unacceptably high, resulting in exclusion of those entitled to benefits. This study suggests that 1/121 is the proportion of false positives by a conservative estimate. This ratio is strongly indicative of the programme excluding individuals who should otherwise receive their entitlements.

The accuracy of biometrics is highly doubtful for a variety of reasons: A person's biometrics change over time; for persons who are engaged in manual labour and also persons who are aged, etc. ridges on the fingers smoothen out and cannot be captured effectively by biometric devices; and there is no safeguard at the crucial point of capturing the biometric that ensures the integrity of the process at the stage of enrolment.

In the above facts and circumstances, the Petitioners are constrained to file the present writ petition under Article 32 of the Constitution of India, challenging the impugned provision as being violative of the Constitution of India.

#### **LIST OF DATES**

28.01.2009	The Union of India through the Planning Commission issued a Notification dated 28.01.2009, constituted the Unique Identification Authority of India (UIDAI) for the purpose of implementing of Unique Identity (UID) scheme wherein a UID data base was to be collected from the residents of India. Notably, there was no mention of collection of biometric information in the said notification. Furthermore the notification did not provide any checks and balance with regard to the collection, storage, usage of the said information collected pursuant to the UID scheme.
------------	---

I

03.12.2010 Although the programme was launched in September 2010, there was no statutory backing for the same. On 03.12.2010, the Union of India introduced the National Identification Authority of India Bill 2010 (NIA Bill) in Parliament. The NIA Bill was almost identical in pith and substance to the Aadhaar Act, 2016.

13.12.2011 Notably, the said NIA Bill was referred to the Parliamentary Standing Committee on Finance. The Standing Committee gave its report on 13.12.2011, wherein it found several fallacies/lacunas in the NIA Bill. Certain specific objections raised by the standing committee pertained to:

- (i) Privacy issues,
- (ii) Protection of the sensitive biometric information,
- (iii) Private parties' involvement in the collection of the biometric information
- (iv) Lack of appropriate technology in India to sustain such a project
- (v) Possibility of fake Aadhaar numbers being generated due to the inadequate verification system under the UID scheme.

NIL In spite of the Standing Committee Report, the Government of India failed to correct/cure defects in the UID scheme. Since the NIA Bill never got passed,

5

the UID scheme continued to operate without any statutory basis or backing. In an absolutely unscrupulous manner the government/UIDAI continued to collect private biometric information from the citizens under the UID scheme. Interestingly, there was absolutely no consent, let alone free and informed consent taken from the individuals who were made to part with their private information. Neither was there any information in the application/enrolment forms regarding the potential use of the said biometric information by the government, nor was there any general public awareness programme carried out by the government to explain the UID programme to the citizens. The collection/enrolment centres were being run by private parties. There was absolutely no government presence in any of the enrolment centres. There were no Government personnel present in these centres where the individuals were made to give up their private biometric information. Furthermore the collecting agencies were also not government authorities. In fact they were agencies who were contractually related to the UIDAI. Therefore the entire UID programme was being conducted and carried out by private authorities with absolutely no government involvement. The entire UID programme was carried out on the basis of

K

numerous MoUs between UIDAI and the concerned authority.

30.11.2012. Aggrieved by such blatant violation of fundamental rights of the citizens of India, a spate of PILs were filed before this Hon'ble Court. The lead petition before this Hon'ble Court was *Justice K. S. Puttaswamy (Retd) v. Union of India & Ors.*, W.P. (C) No.494/2012. This Hon'ble Court vide Order dated 30.11.2012 issued notice in the said petition.

23.9.2013 Another PIL titled *S. G. Vombatkere & Anr. v. Union of India & Ors.*, W.P. (C) No. 829/2013 was filed challenging the Aadhaar project. This Hon'ble Court vide order dated 23.09.2013 issued notice in the writ petition, and tagged it along with Writ Petition No. 494/2012.

Further, this Hon'ble Court on being apprised of the unconstitutional nature of the UID scheme and the gross abuse by the government in refusing essential benefits /services to the citizens if they did not possess and Aadhaar Card, passed an Interim Order dated 23.09.2013 where it was held that Aadhaar card should not be made mandatory for providing governmental benefits.

NIL In spite of the express direction by this Hon'ble Court to not make the use of Aadhaar card as a mandatory requirement, various government authorities, both

L

Central and State, continued to insist upon Aadhaar card as a mandatory condition for providing governmental benefits.

26.11.2013 This Hon'ble Court on being apprised of the continuing violations by the governmental authorities passed another interim order dated 26.11.2013, reiterating its earlier interim order and also impleaded all States and Union territories for effective implementation/enforcement of this Hon'ble Courts interim directions.

24.03.2014 Interestingly, the UIDAI, themselves filed a Special Leave Petition, viz. SLP (CrI) No.2524 of 2014, challenging an order passed by the Bombay High Court requiring them to provide biometric information to CBI for investigation purpose with respect to a criminal trial. This Hon'ble Court vide Order dated 24.03.2014 issued notice in the said SLP and restrained the UIDAI from transferring any biometrics information to any agency without the written consent of the concerned individual. It was further reiterated that Aadhaar should not be made mandatory for availing any service.

11.08.2015 The aforesaid batch of the writ petitions came up for hearing before a Bench of 3 judges of this Hon'ble Court, wherein vide Order dated 11.08.2015 the petitions were referred to a Constitution Bench.



M

However, this Hon'ble Court passed an interim order directing that "*the production of an Aadhaar Card will not be condition for obtaining any benefits otherwise due to a citizen*".

15.10.2015

Subsequently, a Constitution Bench of this Hon'ble Court passed an Interim Order dated 15.10.2015 and held that,

*"5. We will also make it clear that the Aadhaar card scheme is purely voluntary and it cannot be made mandatory till the matter is finally decided by this Court one way or the other."*

It is pertinent to point out that in spite of the repeated directions passed by this Hon'ble Court to not make Aadhaar card mandatory for availing benefits of any type, various authorities from time to time have continued to flout and disobey the directions of this Hon'ble Court.

25.02.2016

The Reserve Bank of India issued Master Direction - Know Your Customer (KYC) Direction, 2016 as per which banks have to accept one of the six official documents for opening of an account including PAN card and Aadhaar. There is no requirement for an individual to produce both the documents for opening of a bank account.

N

*"Officially valid document" (OVD) means the passport, the driving licence, the Permanent Account Number (PAN) Card, the Voter's Identity Card issued by the Election Commission of India, job card issued by NREGA duly signed by an officer of the State Government, letter issued by the Unique Identification Authority of India containing details of name, address and Aadhaar number."*

16.3.2016

In the above backdrop, the Union of India, introduced the Aadhaar (Targetted Delivery of Financial and other subsidies, benefits and services) Act, 2016 (the 'Aadhaar Act') as a Money Bill in the Budget Session, 2016 in the Lok Sabha. Even though the Aadhaar Act was in pith and substance identical to the earlier NIA Bill, 2009 and sought to create the UIDAI authority, in order to qualify it as a Money Bill, the objects and purpose was stated be in relation to expenditures arising out of the Consolidated Fund of India. Notably, under section 57 of the Aadhaar Act, the said UID data base shall be available to any private and non governmental authorities to use the same for verification/authentication.

However, in spite of strong objections from the Opposition with regard to the Aadhaar Act being

0

introduced as a Money Bill, the same came to be passed on 16.3.2016.

26.3.2016 The Aadhaar Act received Presidential assent and was published in the official gazette.

12.7.2016 The Union of India vide Notification dated 12.7.2016 issued under Section 11 of the Aadhaar Act, established the 3<sup>rd</sup> Respondent.

28.10.2016 Aggrieved by the Aadhaar Act, a PIL was filed titled *S. G. Vombatkere & Anr. v. Union of India & Ors.*, W.P. (C) No. 797/2016, challenging the Aadhaar Act before this Court. This Court vide Order dated 26.10.2016 issued *rule nisi* in the said writ petitions and tagged it with the earlier pending writ petitions.

01.06.2017 Prevention of Money Laundering (Maintenance of Records) Second Amendment Rules, 2017 was passed by the Union of India making Aadhaar Number mandatory for opening of bank account and for carrying out any financial transaction equal to or exceeding Rs. 50,000 (Rupees Fifty Thousand Only).

09.06.2017 This Hon'ble Court passed an order in the matter titled *Binoy Viswam v. Union of India & Ors.*, Writ Petition (Civil) No. 247 of 2017 directing that those who have already enrolled themselves under Aadhaar scheme would comply with the requirement of sub-

P

section (2) of Section 139AA of the Income Tax Act. Those who still want to enrol are free to do so. However, those assesseees who are not Aadhaar card holders and do not comply with the provision of Section 139(2), their PAN cards be not treated as invalid for the time being.

04.10.2017

Hence, the present writ petition is being filed under Article 32 of the Constitution of India as a public interest litigation seeking a writ of mandamus directing that the Impugned Provision is *ultra vires* the Constitution of India and is void and illegal.

)

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2017  
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

BETWEEN

1. Mr. M.G. Devasahayam s/o Maria  
Gnanaprahasam at House No: 21,  
Adhimoolam Street, Ponnappanadar  
Nagar, Nagercoil – 629 004, Tamil  
Nadu.

2. Mr. Samuel Rajappa s/o Mr. Mathias  
B. Samuel., 23, Coconut Grove,  
Tansi Nagar 12th Street, Velachery,  
Chennai 600042, Tamil Nadu.

...Petitioners

3. Mr. Thomas Franco Rajendra Dev  
s/o Dr. M. Devasahayam C 15/2 SAF  
Games Village, Koyambedu,  
Chennai 600107, Tamil Nadu

Versus

1. Union of India, through the Secretary,  
Ministry of Finance, North Block,  
New Delhi-110001.

2. Unique Identification Authority of  
India, through its Chief Executive  
Officer, a statutory authority

2

established under the Aadhaar  
(Targeted Delivery of Financial and  
Other Subsidies, Benefits and  
Services) Act, 2016 having its  
address at 3<sup>rd</sup> Floor, Tower-II, Jeevan  
Bharati Building, Connaught Circus,  
New Delhi-110001.

...Respondents

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS OTHER  
COMPANION JUSTICES OF THE HON'BLE THE SUPREME  
COURT OF INDIA.

THE HUMBLE PETITION OF  
THE PETITIONERS ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. By the instant Public Interest Litigation, the Petitioners seek to  
invoke the writ jurisdiction of this Hon'ble Court under Article 32  
of the Constitution of India for enforcement of the fundamental  
rights of the petitioner as also the public at large.

**A. PARTIES**

2. **Petitioners** : The Petitioners herein are bona fide Public  
Interest Litigant whose details are as under:

**(1) PETITIONER NO.1**

- |    |                                    |  |
|----|------------------------------------|--|
| a) | <b>Full Name</b>                   | Mr. M.G. Devasahayam s/o<br>Maria Gnanaprahasam                                |
| b) | <b>Complete Postal<br/>Address</b> | House No: 21, Adhimoolam<br>Street, Ponnappanadar Nagar,<br>Nagercoil - 629004 |
| c) | <b>Email Address</b>               | deva1940@gmail.com   |

- d) Phone No. +91 99401 74446
- e) Proof regarding personal Identification Copy of Pan Card.
- f) Annual Income Rs.9 lakhs
- g) PAN Number AADPD4110B

(2) PETITIONER NO.2

- a) Full Name Mr. Samuel Rajappa s/o Mr. Mathias B. Samuel.  
Copy of the PAN card.
- b) Complete Postal Address 23, Coconut Grove, Tansi Nagar 12th Street, Velachery, Chennai 600042
- c) Email Address samrajappa@gmail.com
- d) Phone No. +91 96599 90871
- e) Proof regarding personal Identification Copy of Pan Card.
- f) Annual Income Rs. 5,50,000. (Five Lakh Fifty Thousand Only)
- g) PAN Number ABBPS4406G

(3) PETITIONER NO.3

- a) Full Name Mr. Thomas Franco Rajendra Dev s/o Dr. M. Devasahayam

- b) **Complete Postal Address** C 15/2 SAF Games Village,  
Koyambedu, Chennai 600107
- c) **Email Address** ngcfranco@gmail.com
- d) **Phone No.**
- e) **Proof regarding personal Identification** Copy of Pan Card.
- f) **Annual Income** Rs.7,20,000/- (Rupees Seve  
Lakh Twenty Thousand only)
- g) **PAN Number** AGOPT4941R

### 3. Respondents

1. The 1<sup>st</sup> Respondent is the Union of India.
2. The 2nd Respondent is the Unique Identification Authority of India (UIDAI), a statutory authority established under Section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (hereinafter, "**Aadhaar Act**"). It was initially established under an executive notification dated 28.01.2009 and thereafter brought under the 2016 statute.
3. The Respondents are amenable to the writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India.  
  
The Respondents are "State" within the meaning of Article 12 of the Constitution of India.



**B. Related matters pending before Constitution Bench**

4. A batch of petitions led by W.P(C) 494/2012 that challenge the Aadhaar project and the Aadhaar (Targeted Delivery of Financial and other subsidies, benefits and services) Act, 2016 are pending before this Hon'ble court. A copy of the order dated 11.8.2015 referring the said batch of petitions together with other connected cases to a Constitution Bench is annexed hereto and marked as **ANNEXURE - P/1 – (PAGES 41 TO 55)**. The Constitution Bench has passed an interim order on 15.10.2015 a copy whereof is hereto annexed and marked as **ANNEXURE - P/2 – (PAGES 56 TO 72)**. Further, a bench of nine learned Judges of this Hon'ble Court was pleased to answer the reference dated 11.08.2015 vide its judgment and order dated 24.08.2017, unanimously holding that the right to privacy is a fundamental right inhering in Part III of the Constitution of India.
5. Extensive documents concerning the Aadhaar project have already been filed by the Petitioners No. 1 and 2 in their previous petitions, viz. WP No. 829/2013 and WP No. 797/2016, and are part of the record of this Court. The Petitioners crave leave to refer to and rely upon the pleadings, annexures and record in the previous writ petitions. 'Convenience compilations' of documents have been prepared for the benefit of the Court in the previous cases. In the circumstances, so as to save paper and not needlessly burden the record, the Petitioners seek liberty not to

6

file further sets of documents with this petition at this stage, but will do so if directed by this Hon'ble Court.

6. The present writ petition may be treated as complementary to the previous writ petition and the averments, grounds and submissions set out in the previous writ petition may be treated as being part of this writ petition. This request is made in the interest of brevity and since the challenge in this writ petition builds upon grounds set out in the previous writ petition.
7. **Cause of Action and nature of injury caused:** The cause of action in the present PIL arose when the Fundamental Rights of the petitioner, as also the public at large, under Art 14, 19, 20 and 21 of the Constitution of India stood violated on 1<sup>st</sup> June 2017, when the Government of India, came out with a notification amending Rule 9 of the PMLA (Maintenance of Records) Rules, 2005 so as to make the authentication of bank account holders through Aadhaar number mandatory thereby forcibly invading the bodily integrity of practically every resident of the country and depriving them of their right to privacy.

### **C. Public Interest Litigation**

8. **Nature of Personal Interest, if any:** This petition is filed as a public interest litigation. Apart from the general public interest, the Petitioners themselves are personally affected as being bank account holders. The Impugned Provision unless set aside as being *ultra vires* the Constitution of India, will adversely affect

and harm citizens across the country, individually and collectively. The Petitioners approach this Hon'ble Court *bona fide* to prevent the violation of basic human rights that have already occurred as a result of the UID project and which violations will escalate in the future, *inter alia*, pursuant to the Impugned Provision unless checked by this Hon'ble Court. Unless the relief sought is granted, a further loss of thousands of crores of rupees in addition to the funds already wasted will continue to be caused to the public exchequer.

9. The Petitioners have not filed any other petition challenging the Impugned Provision.
10. The petitioners herein are not involved in any Civil, Criminal or revenue litigation which would have a legal nexus with the issued involved in the current PIL.
11. The petitioners have also not approached any Government authority on issues concerning the present Writ petition.

#### **D. The Challenge and some of the Issues Involved**

12. This the unique identification project (UID Project) being made mandatory through Rule 9 of the Prevention of Money Laundering Rules, 2017 (hereinafter, "**Rules**") as amended by the Prevention of Money Laundering (Second Amendment) Rules, 2017 (hereinafter, "**Impugned Provision**") for the purpose of opening of bank accounts, maintaining the bank accounts and for carrying any financial transactions equal to or

exceeding Rs. 50,000 (Rupees Fifty Thousand Only). The Impugned Provisions, in particular, violates the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India. A copy of the Prevention of Money Laundering (Second Amendment) Rules, 2017 is annexed herein and marked as ANNEXURE - P/3 – (PAGES 73 TO 82).

13. The Petitioners, *inter alia*, seek appropriate declarations to the effect that the Impugned Provision is *ultra vires* the Constitution of India. The Petitioners seek appropriate declarations regarding their fundamental right to informational self-determination being a facet of Article 21 of the Constitution.

#### E. Brief Facts

14. The facts in brief are set out herein below. Petitioners submit that substantial documentary basis for averments of facts on the Aadhaar project is already part of the aforementioned batch of petitions and are further public documents and crave liberty to not expressly mark those as annexures to this Petition, for the sake of brevity. Petitioners however crave the indulgence of this Hon'ble Court in granting permission to rely on such documents as necessary at any time during this proceeding.
15. The Union of India through the Planning Commission issued a Notification dated 28.01.2009, constituting the Unique Identification Authority of India (UIDAI) Act for the purpose of implementing of Unique Identity (UID) scheme wherein a UID data base was to be collected from the residents of India.

Notably, there was no mention of collection of biometric information in the said notification. Furthermore the notification did not provide any checks and balance with regard to the collection, storage, usage of the said information collected pursuant to the UID scheme. The petitioners seek the liberty of this Hon'ble Court to refer to the copy of the notification dated 28.01.2009 which is part of the record in the aforementioned batch of petitions led by W.P(Civil) 494/2012.

16. Pursuant to the said Notification the Government of India appointed Shri Nandan Nilekani as the Chairman of the UIDAI on 02.07.2009. The UID scheme contemplated that an Aadhaar number which is random 12 digit number which is unique to all residents of India, be issued to the applicant. This Aadhaar number was generated after collecting the biometric information i.e. finger prints and iris scan, along with demographic information about the individual.
17. The scheme was launched in September, 2010 in the rural areas of Maharashtra. Thereafter it has extended all over India. Approximately, 100 crore individuals have been enrolled under the UID scheme till date. Although Aadhaar was supposed to be voluntary, the government has carried out a concerted and sustained campaign to make the enrolment into the UID scheme virtually mandatory. This was done by various offices across the country insisting upon the Aadhaar number for the purposes of providing a service even where alternative methods of identification were available.

18. When the programme was launched in September, 2010 there was no statutory backing for the same. On 03.12.2010, the Union of India introduced the National Identification Authority of India Bill 2010 (NIA Bill) in Parliament. The NIA Bill was very similar to the Aadhaar Act, 2016.
19. The said NIA Bill was referred to the Parliamentary Standing Committee on Finance. The Standing Committee gave its report on 13.12.2011, wherein it found several fallacies/lacunas in the NIA Bill. Certain specific objections raised by the standing committee pertained to:
- (i) Privacy issues,
  - (ii) Protection of the sensitive biometric information,
  - (iii) Private parties' involvement in the collection of the biometric information,
  - (iv) Lack of appropriate technology in India to sustain such a project,
  - (v) Possibility of fake Aadhaar numbers being generated due to the inadequate verification system under the UID scheme.

In spite of the Standing Committee Report, the Government of India failed to correct/cure defects in the UID scheme. The NIA Bill never got passed, and the UID scheme continued to operate without any statutory basis or backing. Private

enrollers continued to collect private biometric and demographic information from the citizens under the UID scheme without any authority in law. No written consent, much less informed consent was taken from the individuals who were made to part with their private information. There is no mention in the application forms specifying the biometrics to be captured. Neither was there any information in the application forms regarding the potential use of the said biometric information by the government, nor was there any general public awareness programme carried out by the government to explain the UID programme to the citizens.

20. The collection/enrolment centres were run by private parties. There was absolutely no government presence in any of the enrolment centres. There were no Government personnel present in these centres where the individuals were made to part with their personal biometric information. The UID programme was operated on the basis of MoUs of doubtful legality between UIDAI and the registrars.
21. The Respondents do not possess the requisite technology for implementing the core biometric identification system. In fact, under the 2009 Notification regime, the UIDAI had entered into arrangements with three consortia, to implement the core biometric identification system in support of the Aadhaar project. These consortias were entrusted with the task of designing, supplying, commissioning, maintaining and supporting the

Biometric Identification System. The leaders of these three consortias are:- (i) Accenture; (ii) Mahindra Satyam & Morpho joint venture, and (iii) L1-Identity Solutions.

22. It is pertinent to note that L1 Identity Solutions is a large American Defence Contractor based in Connecticut, specializing in biometric technology system. Several of its officers and directors have served with the Central Intelligence Agency (CIA) and other American Defence organisation. The former director of CIA, Mr. George Tenet, is on the Board of Directors of L1 Identity Solutions. L1 Identity Solutions has various contractual relationships with US Department of Defence and other intelligence agencies. This is relevant to note, inasmuch as the biometric information of an Indian resident/citizen can be easily transmitted to foreign government, thereby potentially impacting India's sovereignty, national security and severely undermine the privacy and autonomy of the individuals.
23. The Reserve Bank of India on 25.02.2016 issued Master Direction – Know Your Customer (KYC) Direction, 2016 as per which banks have to accept one of the six official documents for opening of an account including PAN card and Aadhaar. There is no requirement for an individual to produce both the documents for opening of a bank account.

*“Officially valid document” (OVD) means the passport, the driving licence, the Permanent Account Number (PAN) Card, the Voter's Identity Card issued by the Election*



*Commission of India, job card issued by NREGA duly signed by an officer of the State Government, letter issued by the Unique Identification Authority of India containing details of name, address and Aadhaar number."*

A copy of the Master Direction – Know You Customer (KYC) Direction, 2016 dated 25.02.2016 is annexed hereto and marked as **ANNEXURE - P/4 – (PAGE NO. 83-141)**.

24. Aggrieved by the violation of fundamental rights of the citizens of India, several of PILs were filed before this Hon'ble Court and in High Courts. The lead petition before this Hon'ble Court was *Justice K. S. Puttaswamy (Retd) v. Union of India & Ors.*, W.P. (C) No.494/2012. This Hon'ble Court vide order dated 30.11.2012 issued notice in the said petition. Another PIL titled *S. G. Vombatkere & Anr. v. Union of India & Ors.*, W.P. (C) No. 829/2013 was filed challenging the Aadhaar project. This Hon'ble Court vide order dated 23.09.2013 issued notice in the writ petition, and tagged it along with Writ Petition No. 494/2012.
25. This Hon'ble Court on being apprised of the unconstitutional nature of the UID scheme and the gross abuse by the government in refusing essential benefits /services to the citizens if they did not possess an Aadhaar Card, passed an Interim Order dated 23.09.2013 where it directed that the Aadhaar card should not be made mandatory for providing governmental

benefits. True copy of the order dated 23.09.2013 passed by this Hon'ble Court in W.P. (C) No.494/2012 is annexed hereto and marked as ANNEXURE - P/5 – (PAGES 142 TO 146).

26. In spite of the express direction by this Hon'ble Court to not make the use of Aadhaar card as a mandatory requirement, various government authorities, both Central and State, continued to insist upon Aadhaar card as a mandatory condition for providing services and/or benefits.
27. This Hon'ble Court on being apprised of the continuing violations by the governmental authorities passed another interim order dated 26.11.2013, reiterating its earlier interim order and also impleaded all States and Union territories for effective implementation/enforcement of this Hon'ble Courts interim directions. True copy of the order dated 26.11.2013 passed by this Hon'ble Court in W.P. (C) No.494/2012 is annexed hereto and marked as ANNEXURE - P/6 – (PAGES 147 TO 149).
28. The UIDAI, themselves filed a Special Leave Petition, viz. SLP (Crl) No.2524 of 2014, challenging an order passed by the Bombay High Court requiring them to provide biometric information to CBI for investigation purpose with respect to a criminal trial. This Hon'ble Court vide order dated 24.03.2014 issued notice in the said SLP and restrained the UIDAI from transferring any biometrics information to any agency without the written consent of the concerned individual. It was further reiterated that Aadhaar should not be made mandatory for availing any service. True copy of the order dated 24.03.2014

passed by this Hon'ble Court in SLP (Crl.) No.2524/2014 is annexed hereto and marked as ANNEXURE - P/7 - (PAGES 150 TO 151).

29. The aforesaid batch of the writ petitions came up for hearing before a Bench of 3 judges of this Hon'ble Court, wherein vide order dated 11.08.2015 the petitions were referred to a Constitution Bench. However, this Hon'ble Court passed an interim order directing that *"The production of an Aadhaar Card will not be condition for obtaining any benefits otherwise due to a citizen"*.
30. Subsequently, a Constitution Bench of this Hon'ble Court passed an Interim Order dated 15.10.2015 and held that,

*"5. We will also make it clear that the Aadhaar card scheme is purely voluntary and it cannot be made mandatory till the matter is finally decided by this Court one way or the other."*

31. In spite of the repeated directions passed by this Hon'ble Court to not make Aadhaar card mandatory for availing benefits of any type, various authorities from time to time have continued to flout and disobey the directions of this Hon'ble Court.
32. Thereafter, the Union of India, passed the Aadhaar Act as a Money Bill in the Budget Session, 2016 in the Lok Sabha. Even though the Aadhaar Act was similar to the earlier NIA Bill, 2009 and sought to create the UIDAI authority, in order to qualify it as a Money Bill, the objects and purpose was stated be in relation

to expenditures arising out of the Consolidated Fund of India. Notably, under section 57 of the Aadhaar Act, the said UID data base shall be available to any private and non governmental authorities to use the same for verification/authentication. A copy of the Aadhaar (Targetted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 is annexed hereto and marked as ANNEXURE - P/8 – (PGES 152 TO 169).

33. Further, a PIL titled as *S. G. Vombatkere & Anr. v. Union of India & Ors.*, W.P. (C) No. 797/2016, challenging the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 before this Court. This Court vide Order dated 26.10.2016 issued *rule nisi* in the said writ petitions and tagged it with the earlier pending writ petitions.
34. This Hon'ble Court on 09.06.2017 passed an order in the matter titled *Binoy Viswam v. Union of India & Ors.*, Writ Petition (Civil) No. 247 of 2017 wherein, Section 139AA of the Income Tax Act was challenged. This Hon'ble Court directed that those who have already enrolled themselves under Aadhaar scheme would comply with the requirement of sub-section (2) of Section 139AA of the Income Tax Act. Those who still want to enrol are free to do so. However, those assesseees who are not Aadhaar card holders and do not comply with the provision of Section 139(2), their PAN cards be not treated as invalid for the time being. The said judgment is reported as *Binoy Viswam v. Union of India & Ors.* (2017) 7 SCC 59.

35. On 24.08.2017, a nine judge bench of this Hon'ble Court, in the case of Justice K. S. Puttaswamy (Retd.) & Anr. Vs. Union of India & Ors (W.P. 494 of 2012) unanimously held that right to privacy is a part of right to life and personal liberty as protected under Article 21 and is therefore guaranteed under the Constitution of India.

#### **F. GROUNDS**

33. The petitioner is impugning Rule 9 of the Prevention of Money Laundering Rules, 2017 as amended by the Prevention of Money Laundering (Second Amendment) Rules, 2017 as introduced by the Finance Act, 2017, on the following amongst other grounds which are set out hereafter and are without prejudice to one another

- (2) Because the impugned provision is violative of the fundamental rights enshrined in Part III of the Constitution of India, including, but not limited to, violative of Article 14, 19 and 21 of the Constitution. The impugned provision, therefore, deserves to be struck down as unconstitutional.

#### **Not a Valid Law**

- (3) Because the impugned provision, being a subordinate legislation, could not have changed the otherwise consensual scheme of Aadhaar Act into a mandatory scheme thereby overturning the entire legislative policy

of Aadhaar. The impugned provision is, therefore, *ultra vires* in nature, and therefore null and void.

- (4) Because, at any rate, the surrender of inalienable personal autonomy or bodily integrity cannot be made mandatory by a subordinate legislation as only the Parliament/State Legislatures have the essential legislative power to mandate any such surrender. The impugned provision, having overstepped into the essential legislative functions of the Parliament/ State Legislature, is *ultra vires* and hence, null and void.
- (5) Because the Central Government, had no due authority to make Rule 9 (17) (c) mandating ceasing operation of bank accounts of Non – Aadhaar holders. The parent sections of PMLA Act, under which the rules have been framed, grant limited power to make rules for identification of clients and maintenance of information. They do not delegate their power to make provisions prescribing adverse consequences against bank account holders. The provision mandating ceasing operation of bank accounts is, therefore, *ultra vires* and consequently void ab initio.
- (6) Because the Rule 9 (17)(c), mandating ceasing operation of bank account of Non – Aadhaar holders, is contrary to the object of the PMLA Act, which

categorically states that the Act had been enacted to “.....provide for **confiscation of property derived from, or involved in, money-laundering**”. Rule 9 (17) (c) provides for effective confiscation of property even though it may not be related to money laundering. The rule is, therefore, ultra vires and void ab initio.

- (7) Because the Central Government is not constitutionally permitted to import the scheme of a ‘money bill’ legislation, such as the Aadhaar Act, into the legislative scheme of an ordinary statute, such as the PMLA Act, through a subordinate legislation. Such an attempt by the Government is impermissible as an ordinary statute is subject to a more stringent legislative procedure as compared to a money bill. The impugned provisions therefore, cannot do indirectly what cannot be done directly. The impugned provisions are therefore, ultra vires in nature and consequently void ab initio.

#### **Deprivation of Life and Personal Liberty**

- (8) Because the impugned provision violates the right to privacy of the residents of India which is now recognised as an essential part of life and personal liberty.
- (9) Because the impugned provision compels a person to obtain an Aadhaar Card, thereby forcing him to part with his core biometric information which is an inseparable

element of his human personality towards which he has an inalienable natural right to preserve a private space. In this regard, the impugned provision, has to be considered in the context of the consolidated legislative scheme of the Aadhaar Act which extends and spreads the use of Aadhaar identification, making it pervasive.

- (10) Because the biometrics of a person, comprising of his fingerprints and iris scan, being a "***sensitive personal data or information***" as recognized under Sec 30 of the Aadhaar Act, is a private information and the impugned provision by compelling disclosure of the same, is depriving the person of his privacy qua the same. The private and confidential nature of the information is also reflective from the other provisions of Chapter VI of the Aadhaar Act (Protection of Information).
- (11) Because the impugned provision deprives a person of his bodily integrity as it violates his right of self determination over his own body by forcibly infringing upon his personal autonomy over his own body and its images/ impressions.
- (12) Because the impugned provision violates all three principal aspects of privacy :



- a. Privacy of person: The impugned provision, by compelling surrender of core biometric information, forcibly invades bodily integrity of an individual which forms an inalienable part of his human personality.
- b. Informational Privacy: Mandatory authentication by way of Aadhaar for availing various services enables the Government to collect, maintain and track the record of information private to an individual even though he may not want to share it with anyone.
- c. Privacy of choice: Collection and surveillance of private information of an individual, enables the Government to directly and indirectly affect the choices of an individual, thereby violating his autonomy over fundamental personal choices.

**Right to Life/Privacy deprived as a Rule rather than an Exception**

- (13) Because the right to life and personal liberty, including the right to privacy, being inalienable rights, can only be deprived as an exception. The same is evident from the language of Article 21, "except according to *procedure established by law*". Therefore, as a rule, a person is constitutionally and naturally entitled to enjoy his life, personal liberty and privacy peacefully. Only if he steps into the zone of exception, can he be deprived of his life and personal liberty. Such

deprivation must also adhere to due procedure. The impugned provisions, in contrast, deprive every law abiding and peaceful resident of India, of their right to privacy. It, therefore, does not just limit but takes away completely, the right to life/privacy.

#### **Violative of Article 14**

- (14) Because the Impugned Provision is clearly violative of Article 14 of the Constitution of India inasmuch as they create a wrongful classification amongst bank account owners and this artificial classification also has no rational nexus to the objects of the PMLA Act
- (15) Unfairly equates individual to a criminal: Because the impugned provision violates Article 14 as it treats the unequals equally. It is submitted that universally, in the civilized world, fingerprint and biometric identification by State is reserved for criminals and victims of crimes. The provision, by compelling every law abiding resident to surrender their core biometric information, effectively equates them to criminals.
- (16) Legitimate proceeds equated to crime proceeds: Because Rule 9 (17) (c), unfairly equates a law abiding resident inclined to protect his privacy to a criminal whose account has been attached under the PMLA Act. In fact, under PMLA Act, the criminal is given a hearing

in respect of the attachment which, a law abiding resident is deprived of under the impugned provision.

(17) No reasonable classification: Because whether or not an individual is willing to part with his or her core biometric information is completely irrelevant to the right of a person to possess bank accounts which violates Article 14 of the Constitution of India and is palpably arbitrary and illegal inasmuch as it creates an artificial impermissible classification between those persons who have parted with biometrics and those who have not parted with biometrics for the purpose of opening of bank accounts and financial transactions. Differently put, the Impugned Provision creates an artificial distinction between those persons who hold an Aadhaar number and who do not.

(18) Self Defeating: Because the impugned provisions are manifestly arbitrary and irrational and violative of Article 14 of the Constitution inasmuch as the linking of Aadhaar and Bank accounts would not only fail to achieve its objectives but in fact facilitate the exact opposite. In this regard it is submitted that the nature of the information and its susceptibility to clandestine invasion/hacking would serve as tool for the real money launderers to launder crime proceeds by executing identity thefts/good faith identity mis-mapping. The

invisibility of such illegal invasion would result in such fraudulent transactions to proliferate unmanageably, thereby mixing noise with signal and making even existing financial intelligence and detection systems unworkable.

- (19) Because the impugned provisions fails to take into account the lack of banking infrastructure, including lack of adequate manpower to undertake, such a massive exercise as that of linking every bank account with an Aadhaar number. It is submitted that practically no additional staff is being recruited to handle the additional E-KYC process, which is cumbersome, error-prone as is being witnessed everywhere. Instead the additional burden is falling upon the already strained existing bankers who are neither getting additional time to undertake the work nor are they being remunerated for taking this additional responsibility. It may be emphasized that the petitioners are well placed to make this submission as one of them heads the bankers' association in a bank.
- (20) Because the impugned notification is manifestly irrational and violative of Article 14 of the Constitution inasmuch as it does not take into account relevant factors such :

- a. lack of expertise among existing banking workforce;
- b. complete transfer of control of operations to a system without divesting of responsibility from the banker;
- c. possibility of some other bank manipulating the data that relates to the customer and banking account of a customer merely because the said customer also has an account elsewhere.

**En-Masse Surveillance: Threatens Constitutional Fabric**

- (21) Enables unauthorised surveillance: Because the consolidated legislative scheme of the Aadhaar Act, of which the impugned provision is a part of, practically enables the Central Government to carry out clandestine en-masse surveillance into the private life of its subjects without their consent. It empowers the Government, through CIDR - the authentication agency, to collect, track and retain information of every benefit or service, availed by an individual by Aadhaar authentication. This not only destroys the privacy of an individual, but also puts the Government in a position whereby merely on the basis of aggregate authentication records it can build an entire profile of the individual, community and segment of the citizenry.
- (22) Invisible Invasion: Because the nature of the information and its manner of storage makes the invasion of privacy

invisible, thereby eliminating any effective limitation on state surveillance. Reference in this regard may be made to judgment in the case of Justice K. S. Puttaswamy & Anr. Vs. Union of India (W.P. (C) no. 494 of 2012), wherein this Hon'ble Court held as under:

*"173. The age of information has resulted in complex issues for informational privacy. These issues arise from the nature of information itself. Information has three facets: it is non rivalrous, invisible and recombinant. Information is non rivalrous in the sense that there can be simultaneous users of the good - use of a piece of information by one person does not make it less available to another. Secondly, invasions of data privacy are difficult to detect because they can be invisible. Information can be accessed, stored and disseminated without notice. Its ability to travel at the speed of light enhances the invisibility of access to data, "information collection can be the swiftest theft of all". Thirdly, information is recombinant in the sense that data output can be used as an input to generate more data output."*

Emphasis Supplied

(23) Because the power to carry out surveillance of all its subjects without their consent or knowledge threatens the

very Constitutional scheme of checks and balances. It arms the executive with unfettered power to adversely influence all vital threads of constitution, including fundamental rights, the separation of power, independence of judiciary, federal Government, democracy, secularism etc., paving the way for an authoritarian state.

- (24) Because the Constitution of India, specifically Articles 14, 19, 20 and 21 proscribe the creation of a surveillance State. The Constitution does not allow any system or programme to be implemented by the State that results in en masse surveillance. The State is under an obligation under Article 13(2) of the Constitution of India to ensure that it shall not make any law which takes away or abridges the rights conferred under Part III of the Constitution of India. Nevertheless, the Aadhaar Act purports to provide legal sanction to a programme that lays the framework for real time surveillance and that enables surveillance of every Indian.

**Surveillance : Violative of Article 19 read with Article 21**

- (25) **Violative of Freedom of Movement:** Because unauthorized surveillance of a person is violative of his Freedom of Movement and also his right to personal liberty as held by Hon'ble Justice Subbarao in his now

acclaimed dissent in *Kharak Singh Vs. State of Uttar Pradesh*, (1964) 1 SCR 332:

"29. .... If a man is shadowed, his movements are obviously constricted. He can move physically, but it can only be a movement of an automaton. How could a movement under the scrutinizing gaze of the policemen be described as a free movement? The whole country is his jail. The freedom of movement in clause (d) therefore must be a movement in a free country i.e. in a country where he can do whatever he likes, speak to whomsoever he wants, meet people of his own choice without any apprehension, subject of course to the law of social control. The petitioner under the shadow of surveillance is certainly deprived of this freedom. He can move physically, but he cannot do so freely, for all his activities are watched and noted. The shroud of surveillance cast upon him perforce engender inhibitions in him and he cannot act freely as he would like to do. We would, therefore, hold that the entire Regulation 236 offends also Article 19(1)(d) of the Constitution"

Emphasis Supplied

(26) Violative of Freedom of Expression: Because fingerprints and other core biometric information are forms of expression and by compelling the residents of India to provide the same to the state, the impugned provision is violating the resident's freedom 'not to express' or freedom to remain silent, which is also a part of freedom of speech and expression under Article 19(1)(a).



(27) **Surveillance violates all freedoms:** Because the surveillance capability of the State, through the consolidated legislative scheme of Aadhaar, enables the state to clandestinely deprive the residents of the freedoms enshrined under Art 19 (1), irrespective of whether they fall within the scope of Art 19(2) to Art 19(6).

(28) **Unreasonable Restrictions:** Because the impugned provisions are not reasonable, but arbitrary, excessive and disproportional restrictions on the freedoms of the citizen of India. The provisions, in order to achieve the end of authentication of bank account holders is not only seeking to invade the bodily integrity and dignity of every citizen but also subjecting them to surveillance despite being a law abiding citizen. Further, the consolidated legislative scheme of Aadhaar empowers the State to an extent which threatens the scheme of the Constitution itself. It deprives every citizen of his right to life without due procedure. The restriction imposed by impugned provisions is therefore, disproportionate to the ends they seek to achieve.

(29) Because the end sought to be achieved by the impugned provision does not fall within the scope of Art 19 (2) to Art 19(6) so as to justify imposition of any restriction.

- (30) **No Compelling State Interest:** Because there neither is, nor can there be, a compelling state interest to justify such a wide spread deprivation of privacy which threatens the scheme of the Constitution itself. It is submitted that identification of bank account holders does not qualify as a compelling state interest. This especially when there are parallel identification such as PAN, Official Validity Documents, KYC norms etc. which achieve the same purpose with equal efficiency without violating the privacy of an individual or threatening the constitutional scheme of the country.

**No procedural or Technical Safeguards**

- (31) **Absent Safeguards:** Because the sensitive and private nature of the biometric information entrusted to the government requires stringent procedural and technical safeguards to protect the same which is absent under the Aadhaar scheme as laid out in the Aadhaar Act and its implementation process.
- (32) **Outsourcing to International Defence Contractors and Multinationals:** Because the Government of India has violated its fiduciary duty towards its residents by outsourcing virtually every facet of the Aadhaar scheme to third parties. These third parties, *inter alia*, comprise of overseas defence contractors and corporations

associated with foreign governments and intelligence agencies. These third parties, who have provided the biometric recognition and de-duplication technology, have power and control to, *inter alia*, access, manipulate, transmit overseas, remove and commercially exploit this data. Under the systems recognized by the Aadhaar Act, these multinational corporations can exercise dominion and control over the Aadhaar authentication system in perpetuity, with full access to sensitive biometrics and demographic details of Indian citizens and residents.

(33) **No Control with Government:** Because no provision in the Aadhaar Act requires these technologies and the control of these operations, to be handed over or to be controlled by UIDAI. The respondents have no knowledge in this behalf within their own capacity. In light of the private nature of the information and its form of storage, even the very minimum standard of national and financial security of the nation would require that the respondents have control over the manner and method of storage, access and operation with respect to Aadhaar data.

(34) **Questionable Security of Aadhaar:** Because the failure and neglect on the part of the Government to create a sufficiently secure system based on indigenous technology, control and checks undermines the Aadhaar project and

takes away the credibility, integrity and security of the programme based on which the Aadhaar Act is founded. The fiduciary and trusteeship principle demands that the Government of India itself has complete and comprehensive capacity to deal with every aspect of the Aadhaar programme, specifically the de-duplication and storage process.

- (35) **Susceptibility of Identity Theft:** Because the Aadhaar project makes every person in India extremely vulnerable to the threat of identity theft and the impugned provision furthers this possibility by seeking to expand the Aadhaar database. This is so as the biometric information of person can be hacked and stolen from the CIDR as has happened the world over from several highly sensitive protected data repositories. Where centralized biometric data is stolen, the identity of a person is severely compromised since (a) biometric information of an individual can never be replaced; and (b) the wrongdoer coming to access this information can impersonate the real individual without the system detecting any mischief.

- (36) **Non Delegable Trust:** Because this role of a trustee, given the sensitive nature of the information must be exercised by the State or organs of the State alone. It cannot be delegated to private parties operating without any governmental supervision.

**Violates Right to Property Under Art 300 A**

(37) Because the impugned provisions have no authority of law and are in violation of the right to property enshrined under Article 300A of the Constitution of India. It is submitted that ceasing operation of bank accounts and depriving a law abiding citizen of his hard earned legitimate money is against the constitutional right of person to not be deprived of his property. Further, biometric information, also in a sense being a personal property of an individual cannot be deprived in violation of Art 300 A.

**No Free Consent**

(38) Because the Aadhaar programme is built on the edifice of an illegal programme that has, through a process of duplicity, gathered personal sensitive data and information from citizens without securing their informed consent. In this regard, it is pertinent to note that even persons who are already in possess an Aadhaar Number, were not duly informed or counselled of the processes and consequences, before their consent was taken for enrolment. This is evident from the following:

- a. The forms utilized by the private enrolment agencies as prescribed by UIDAI do not even purport to convey consent for either capture or use of biometric information. They do not specify the biometric information being captured.

- b. There is no contemporaneous video record of any counselling carried out explaining to the individual the effect and consequences of parting with biometrics or the use to which the biometrics may be put.
- c. There is no government official present or any method of objectively assessing the fairness of the consent process (assuming there was one) at the stage of enrolment.

It is submitted that the programme is antithetical to fairness and good governance.

- (39) Because the consolidated legislative scheme of Aadhaar effaces the concept of free consent by making it a mandatory requirement for opening and maintaining of bank accounts. The coercive provision of freezing of accounts on non submission of Aadhaar identification extinguishes any scope for free consent. It is submitted that such absence of free and informed consent amounts to wrongful deprivation of the most intimate personal property of individuals.

#### **G. JURISDICTION**

35. This petition is being preferred to this Hon'ble Court under Article 32 of the Constitution of India having regard to the violation of Article 14, 19 and 21 of the Constitution of India as explained above. Having regard to the nationwide implications of the important issues raised in this petition, this Hon'ble Court ought to entertain and hear the present petition. The Petitioners state that they have not filed any other similar

petition challenging the Impugned Provision before this Hon'ble Court or any High Court. However, as set out above, the Petitioners No. 1 and 2 herein have challenged the Aadhaar project and the Aadhaar Act in their previous writ petitions.

#### **H. PRAYERS**

In the premises, this Hon'ble Court may be pleased to issue appropriate declarations, writs, orders and directions as set out below:

- a) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction declaring Rule 9 of the Prevention of Money Laundering Rules, 2017 as amended by the Prevention of Money Laundering (Second Amendment) Rules, 2017 as *ultra vires*, unconstitutional, null and void and in particular violate Articles 14, 19 and 21 of the Constitution of India;
- b) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction declaring that bank accounts will not be denied or ceased on the basis that he or she does not have an Aadhaar number;
- c) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of mandamus against the Respondents directing them to forthwith forbear from implementing or acting pursuant to or in implementation of Rule 9 of the Prevention of

Money Laundering Rules, 2017 as amended by the Prevention of Money Laundering (Second Amendment) Rules, 2017;


- e) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of mandamus against the Respondents directing them to forthwith clarify by issuing appropriate announcements, circulars and/or directions that no citizen of India is required to obtain an Aadhaar number/Aadhaar card and that the the program under the Aadhaar Act is entirely voluntary even for opening or maintaining the bank accounts and carrying financial transactions;
- g) This Hon'ble Court may be pleased to award costs relating to the present petition to the Petitioners; and
- h) This Hon'ble Court may be pleased to issue any other writ/order/direction in the nature of mandamus as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS , THE PETITIONERS  
SHALL, AS IN DUTY BOUND , EVER PRAY

**DRAWN BY:**

APAR GUPTA, ADVOCATE &  
DEEPAYAN MANDAL, ADVOCATE ON RECORD

**FILED BY:**

  
(DEEPAYAN MANDAL)  
Advocate for the Petitioners



## IN THE SUPREME COURT OF INDIA

## CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2017

IN THE MATTER OF:

M.G. Devasahayam &amp; Ors.

...Petitioners

Versus

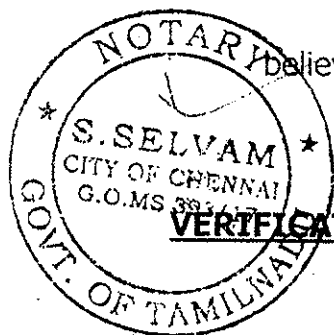
Union of India &amp; Ors.

...Respondents

AFFIDAVIT

I, Sameul Rajappa, S/o Mathias B Samuel, aged about 78 years,  
R/o 23, Coconut Grove, Tansi Nagar 12th Street, Velachery, Chennai  
600042 do hereby solemnly affirm and state as under:

1. I am the Petitioner No.2 herein, I am fully conversant with the facts and circumstances of the Present case and am as such competent to swear the present affidavit on behalf of the Petitioners.
2. I have read and understood the contents of the accompanying writ petition from pages (1-36) through para (A-H) and annexures thereto namely (P-1 to P-8) through list of Dates (B-P) and also the accompanying application for directions and say that the facts set out therein are true to my knowledge and submissions made therein are on legal advice received from my Advocates and believed to be true and correct.

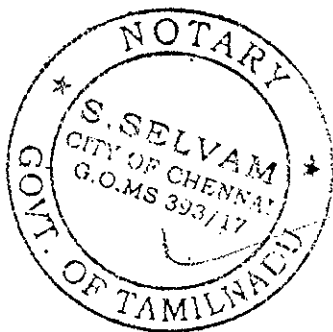
VERIFICATION:

*Rajappa*  
**DEPONENT**

37(A)

Verified at                      on this the                      day of September, 2017 that the contents of paragraphs 1 to 2 of my above affidavit are true and correct to my knowledge, information and belief, that no part of it is false and nothing material has been concealed there from.

*Rajappa*  
**DEPONENT**



*[Signature]*  
S. SELVAM, B.A.B.L.,  
ADVOCATE & NOTARY,  
26-J-BLOCK,  
VENKETTAPURAM,  
SAIDAPET, MADRAS-15

*11.10.17*

IN THE SUPREME COURT OF INDIA

38

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. OF 2017

IN THE MATTER OF:

M.G. Devasahayam & Ors.

...Petitioners

Versus

Union of India & Ors.

...Respondents

AFFIDAVIT

I, M.G. Devasahayam, S/o Maria Gnanaprahasam, aged about 76 years, R/o House No: 21, Adhimoolam Street, Ponnappanadar Nagar, Nagercoil - 629004, presently at New Delhi, do hereby solemnly affirm and state as under:

1. I am the Petitioner No.1 herein, I am fully conversant with the facts and circumstances of the Present case and am as such competent to swear the present affidavit on behalf of the Petitioners.
2. I have read and understood the contents of the accompanying writ petition from pages (1-36) through Para (A-H) and annexures thereto namely (P-1 to P-8) through <sup>list of Dates (B-P)</sup> and also the accompanying application for directions and say that the facts set out therein are true to my knowledge and submissions made therein are on legal advice received from my Advocates and believed to be true and correct.

  
DEPONENT

**VERIFICATION:**

38(A)

Verified at New Delhi on this the fifteenth (15<sup>th</sup>) day of September, 2017 that the contents of paragraphs 1 to 2 of my above affidavit are true and correct to my knowledge, information and belief, that no part of it is false and nothing material has been concealed there from.



**DEPONENT**

39

**IN THE SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (C) NO.    OF 2017**

**IN THE MATTER OF:**

M.G. Devasahayam & Ors.

...Petitioners

Versus

Union of India & Ors.

...Respondents

**AFFIDAVIT**

I, D. Thomas Franco Rajendra Dev, S/o Late Dr. M. Devasahayam, aged about 59 years, R/o C 15/2 SAF Games Village, Koyambedu, Chennai, 600107, presently at New Delhi, do hereby solemnly affirm and state as under:


1. I am the Petitioner No.3 herein, I am fully conversant with the facts and circumstances of the Present case and am as such competent to swear the present affidavit on behalf of the Petitioners.
2. I have read and understood the contents of the accompanying writ petition from pages (1-36) through Para (A-H) and annexures thereto namely (P-1 to P-8) through list of Dates (B-P) and also the accompanying application for directions and say that the facts set out therein are true to my knowledge and submissions made therein are on legal advice received from my Advocates and believed to be true and correct.

  
**DEPONENT**

**VERIFICATION:**

Verified at New Delhi on this the fifteenth (15<sup>th</sup>) day of September, 2017  
that the contents of paragraphs 1 to 2 of my above affidavit are true

and correct to my knowledge, information and belief, that no part of it is false and nothing material has been concealed there from.

  
**DEPONENT**

ANNEXURE P/1

41

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) NO.494 OF 2012

Justice K.S. Puttaswamy (Retd.) & Another ... Petitioners

*Versus*

Union of India & Others ... Respondents

WITH

TRANSFERRED CASE (CIVIL) NO.151 OF 2013

TRANSFERRED CASE (CIVIL) NO.152 OF 2013

WRIT PETITION (CIVIL) NO.829 OF 2013

WRIT PETITION (CIVIL) NO.833 OF 2013

WRIT PETITION (CIVIL) NO.932 OF 2013

TRANSFER PETITION (CIVIL) NO.312 OF 2014

TRANSFER PETITION (CIVIL) NO.313 OF 2014

WRIT PETITION (CIVIL) NO.37 OF 2015

WRIT PETITION (CIVIL) NO.220 OF 2015

TRANSFER PETITION (CIVIL) NO.921 OF 2015

CONTEMPT PETITION (CIVIL) NO.144 OF 2014 IN WP(C)

494/2012

CONTEMPT PETITION (CIVIL) NO.470 OF 2015 IN WP(C)

494/2012

**ORDER**

1. In this batch of matters, a scheme propounded by the Government of India popularly known as "Aadhaar Card Scheme" is under attack on various counts. For the purpose of this order, it is not necessary

//TRUE & TYPED COPY//

for us to go into the details of the nature of the scheme and the various counts on which the scheme is attacked. Suffice it to say that under the said scheme the Government of India is collecting and compiling both the demographic and biometric data of the residents of this country to be used for various purposes, the details of which are not relevant at present.

2. One of the grounds of attack on the scheme is that the very collection of such biometric data is violative of the "right to privacy". Some of the petitioners assert that the right to privacy is implied under Article 21 of the Constitution of India while other petitioners assert that such a right emanates not only from Article 21 but also from various other articles embodying the fundamental rights guaranteed under Part-III of the Constitution of India.

3. When the matter was taken up for hearing, Shri Mukul Rohatgi, learned Attorney General made a submission that in view of the judgments of this Court in ***M.P. Sharma & Others v. Satish handra & Others***, AIR 1954 SC 300 and ***Kharak Singh v. State of U.P. & Others***, AIR 1963 SC 1295, (decided by *Eight* and *Six* Judges respectively) the legal position regarding the existence of the fundamental right to privacy is doubtful. Further, the learned Attorney General also submitted that in a catena of decisions of this Court rendered subsequently, this Court referred to "right to privacy", contrary to the judgments in the abovementioned cases which resulted in jurisprudentially impermissible divergence of judicial opinions.

"A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and



that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations **by recognition of a fundamental right to privacy**, analogous to the American Fourth Amendment, **we have no justification to import it, into a totally different fundamental right, by some process of strained construction.** [See: M.P. Singh & Others v. Satish Chandra & Others, AIR 1954 SC 300, page 306 para 18]

"... Nor do we consider that Art. 21 has any relevance in the context as was sought to be suggested by learned counsel for the petitioner. As already pointed out, **the right of privacy is not a guaranteed right under our Constitution** and therefore the attempt to ascertain the movement of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III." [See: Kharak Singh v. State of U.P. & Others, AIR 1963 SC 1295, page 1303 para 20]

[Emphasis supplied]

4. Learned Attorney General submitted that such impermissible divergence of opinion commenced with the judgment of this Court in ***Gobind v. State of M.P. & Another***, (1975) 2 SCC 148, which formed the basis for the subsequent decision of this Court wherein the "right to privacy" is asserted or at least referred to. The most important of such cases are ***R. Rajagopal & Another v. State of Tamil Nadu & Others***, (1994) 6 SCC 632 (popularly known as *Auto Shanker's* case) and ***People's Union for Civil Liberties (PUCL) v. Union of India & Another***, (1997) 1 SCC 301.

5. All the judgments referred to above were rendered by smaller Benches of two or three Judges.

6. Shri K.K. Venugopal, learned senior counsel appearing for one of the respondents submitted that the decision of this Court in **Gobind** (*supra*) is not consistent with the decisions of this Court in **M.P. Sharma** and **Kharak Singh**. He submitted that such divergence is also noticed by the academicians, Shri F.S. Nariman, Senior Advocate of this Court and Shri A.M. Bhattacharjee<sup>1</sup>, Former Chief Justice, High Court at Calcutta and High Court at Bombay.

7. Therefore, it is submitted by the learned Attorney General and Shri Venugopal that to settle the legal position, this batch of matters is required to be heard by a larger Bench of this Court as these matter throw up for debate important questions – (i) whether there is any “right to privacy” guaranteed under our Constitution. (ii) If such a right exists, what is the source and what are the contours of such a right as there is no express provision in the Constitution adumbrating the right to privacy. It is therefore submitted that these batch of matters are required to be heard and decided by a larger bench of at least five Judges in view of the mandate contained under Article 145(3)2 of the Constitution of India.

8. On behalf of the petitioners Shri Gopal Subramaniam and Shri Shyam Divan, learned senior counsel very vehemently opposed the suggestion that this batch of matters is required to be heard by a larger bench. According to them:

(i) The conclusions recorded by this Court in **R. Rajagopal** and **PUCL** are legally tenable for the reason that the observations made in **M.P. Sharma** regarding the absence of right to privacy under our

Constitution are not part of ratio decidendi of that case and, therefore, do not bind the subsequent smaller Benches.

(ii) Coming to the case of **Kharak Singh**, majority in **Kharak Singh** did hold that the right of a person not to be disturbed at his residence by the State and its officers is recognized to be a part of a fundamental right guaranteed under Article 21 which is nothing but an aspect of privacy. The observation in para 20 of the majority judgment at best can be construed only to mean that there is no fundamental right of privacy against the State's authority to keep surveillance on the activities of a person. Even such a conclusion cannot be good law any more in view of the express declaration made by a seven-Judge bench decision of this Court in **Maneka Gandhi v. Union of India & Another**, (1978) 1 SCC 2483.

(iii) They further argued that both **M.P. Sharma (supra)** and **Kharak Singh (supra)** came to be decided on an interpretation of the Constitution based on the principles expounded in **A.K. Gopalan v. State of Madras**, AIR 1950 SC 27. Such principles propounded by **A.K. Gopalan** themselves came to be declared wrong by a larger Bench of this Court in **Rustom Cavasjee Cooper v. Union of India**, (1970) 1 SCC 248. Therefore, there is no need for the instant batch of matters to be heard by a larger Bench.

9. It is true that **Gobind (supra)** did not make a clear declaration that there is a right to privacy flowing from any of the fundamental rights guaranteed under Part-III of the Constitution of India, but observed that "Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom

of speech create an independent right of privacy as an emanation from them which one can

characterize as a fundamental right, we do not think that the right is absolute".

This Court proceeded to decide the case on such basis.

10. However, the subsequent decisions in *R. Rajagopal (supra)* and *PUCL (supra)*, the Benches were more categorical in asserting the existence of "right to privacy". While *R. Rajagopal's case* held that the "right to privacy" is implicit under Article 21 of the Constitution, *PUCL's case* held that the "right to privacy" insofar as it pertains to speech is part of fundamental rights under Articles 19(1)(a) and 21 of the Constitution.

11. Elaborate submissions are made at the bar by the learned counsel for the petitioners to demonstrate that world over in all the countries where Anglo-Saxon jurisprudence is followed, 'privacy' is recognised as an important aspect of the liberty of human beings. It is further submitted that it is too late in the day for the Union of India to argue that the Constitution of India does not recognise privacy as an aspect of the liberty under Article 21 of the Constitution of India. At least to the extent that the right of a person to be secure in his house and not to be disturbed unreasonably by the State or its officers is expressly recognized and protected in *Kharak Singh (supra)* though the majority did not describe that aspect of the liberty as a right of privacy, it is nothing but the right of privacy.

12. We are of the opinion that the cases on hand raise far reaching questions of importance involving interpretation of the Constitution. What is at stake is the amplitude of the fundamental rights including that precious and inalienable right under Article 21. If the observations made in ***M.P. Sharma*** (*supra*) and ***Kharak Singh*** (*supra*) are to be read literally and accepted as the law of this country, the fundamental rights guaranteed under the Constitution of India and more particularly right to liberty under Article 21 would be denuded of vigour and vitality. At the same time, we are also of the opinion that the institutional integrity and judicial discipline require that pronouncement made by larger Benches of this Court cannot be ignored by the smaller Benches without appropriately explaining the reasons for not following the pronouncements made by such larger Benches. With due respect to all the learned Judges who rendered the

subsequent judgments - where right to privacy is asserted or referred to their Lordships concern for the liberty of human beings, we are of the humble opinion that there appears to be certain amount of apparent unresolved contradiction in the law declared by this Court.

13. Therefore, in our opinion to give a quietus to the kind of controversy raised in this batch of cases once for all, it is better that the ratio decidendi of ***M.P. Sharma*** (*supra*) and ***Kharak Singh*** (*supra*) is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the right to privacy is either asserted or referred be examined and authoritatively decided by a Bench of appropriate strength.

14. We, therefore, direct the Registry to place these matters before the Hon'ble the Chief Justice of India for appropriate orders.

.....J.

(J. Chelameswar)

.....J.

(S.A. Bobde)

.....J.

(C. Nagappan)

New Delhi

August 11, 2015

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) NO.494 OF 2012

Justice K.S. Puttaswamy (Retd.) & Another ...Petitioners

*Versus*

Union of India & Others ...Respondents

WITH

TRANSFERRED CASE (CIVIL) NO.151 OF 2013

TRANSFERRED CASE (CIVIL) NO.152 OF 2013

WRIT PETITION (CIVIL) NO.829 OF 2013

WRIT PETITION (CIVIL) NO.833 OF 2013

WRIT PETITION (CIVIL) NO.932 OF 2013

TRANSFER PETITION (CIVIL) NO.312 OF 2014

TRANSFER PETITION (CIVIL) NO.313 OF 2014

WRIT PETITION (CIVIL) NO.37 OF 2015

WRIT PETITION (CIVIL) NO.220 OF 2015

TRANSFER PETITION (CIVIL) NO.921 OF 2015

CONTEMPT PETITION (CIVIL) NO.144 OF 2014 IN WP(C)

494/2012

CONTEMPT PETITION (CIVIL) NO.470 OF 2015 IN WP(C)

494/2012

**ORDER**

//TRUE & TYPED COPY//

Having regard to importance of the matter, it is desirable  
that the matter be heard at the earliest.

.....J.

(J. Chelameswar)

.....J.

(S.A. Bobde)

.....J.

(C. Nagappan)

New Delhi

August 11, 2015



REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (CIVIL) NO.494 OF 2012

Justice K.S. Puttaswamy (Retd.) & Another ... Petitioners

*Versus*

Union of India & Others ... Respondents

WITH

TRANSFERRED CASE (CIVIL) NO.151 OF 2013

TRANSFERRED CASE (CIVIL) NO.152 OF 2013

WRIT PETITION (CIVIL) NO.829 OF 2013

WRIT PETITION (CIVIL) NO.833 OF 2013

WRIT PETITION (CIVIL) NO.932 OF 2013

TRANSFER PETITION (CIVIL) NO.312 OF 2014

TRANSFER PETITION (CIVIL) NO.313 OF 2014

WRIT PETITION (CIVIL) NO.37 OF 2015

WRIT PETITION (CIVIL) NO.220 OF 2015

TRANSFER PETITION (CIVIL) NO.921 OF 2015

CONTEMPT PETITION (CIVIL) NO.144 OF 2014 IN WP(C)

494/2012

CONTEMPT PETITION (CIVIL) NO.470 OF 2015 IN WP(C)

494/2012

INTERIM ORDER

//TRUE & TYPED COPY//

After the matter was referred for decision by a larger Bench, the learned counsel for the petitioners prayed for further interim orders. The last interim order in force is the order of this Court dated 23.9.2013 which reads as follows:-

“....All the matters require to be heard finally. List all matters for final hearing after the Constitution Bench is over. In the meanwhile, no person

should suffer for not getting the Aadhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Aadhaar card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant.”

It was submitted by Shri Shyam Divan, learned counsel for the petitioners that the petitioners having pointed out a serious breach of privacy in their submissions, preceding the reference, this Court may grant an injunction restraining the authorities from proceeding further in the matter of obtaining biometrics etc. for an Aadhaar card. Shri Shyam Divan submitted that the biometric information of an individual can be circulated to other authorities or corporate bodies which, in turn can be used by them for commercial exploitation and, therefore, must be stopped.

The learned Attorney General pointed out, on the other hand, that this Court has at no point of time, even while making the interim order dated 23.9.2013 granted an injunction restraining the Unique Identification Authority of India from going ahead and obtaining biometric or other information from a citizen for the purpose of a

//TRUE & TYPED COPY//

Unique Identification Number, better known as "Aadhaar card". It was further submitted that the respondents have gone ahead with the project and have issued Aadhaar cards to about 90% of the population. Also that a large amount of money has been spent by the Union Government on this project for issuing Aadhaar cards and that in the circumstances, none of the well-known considerations for grant of injunction are in favour of the petitioners.

The learned Attorney General stated that the respondents do not share any personal information of an Aadhaar card holder through biometrics or otherwise with any other person or authority. This statement allays the apprehension for now, that there is a widespread breach of privacy of those to whom an Aadhaar card has been issued. It was further contended on behalf of the petitioners that there still is breach of privacy. This is a matter which need not be gone into further at this stage.

The learned Attorney General has further submitted that the Aadhaar card is of great benefit since it ensures an effective implementation of several social benefit schemes of the Government like MGNREGA, the distribution of food, ration and kerosene through PDS system and grant of subsidies in the distribution of LPG. It was, therefore, submitted that restraining the respondents from issuing further Aadhaar cards or fully utilising the existing Aadhaar cards for the social schemes of the Government should be allowed.

The learned Attorney General further stated that the respondent Union of India would ensure that Aadhaar cards would only be issued

//TRUE & TYPED COPY//

on a consensual basis after informing the public at large about the fact that the preparation of Aadhaar card involving the parting of biometric information of the individual, which shall however not be used for any purpose other than a social benefit schemes.

Having considered the matter, we are of the view that the balance of interest would be best served, till the matter is finally decided by a larger Bench if the Union of India or the UIDA proceed in the following manner:-

1. The Union of India shall give wide publicity in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain an Aadhaar card;
2. The production of an Aadhaar card will not be condition for obtaining any benefits otherwise due to a citizen;
3. The Unique Identification Number or the Aadhaar card will not be used by the respondents for any purpose other than the PDS Scheme and in particular for the purpose of distribution of foodgrains, etc. and cooking fuel, such as kerosene. The Aadhaar card may also be used for the purpose of the LPG Distribution Scheme;
4. The information about an individual obtained by the Unique Identification Authority of India while issuing an Aadhaar card shall not be used for any other purpose, save as above, except as may be directed by a Court for the purpose of criminal investigation.

Ordered accordingly.

//TRUE & TYPED COPY//

.....J.

(J. Chelameswar)

.....J.


(S.A. Bobde)

.....J.

(C. Nagappan)

New Delhi

August 11, 2015



//TRUE & TYPED COPY//

ITEM NO.501

COURT NO.1

SECTION PIL(W)

ANNEXURE P/2 56

S U P R E M E C O U R T O F I N D I A

R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s). 494/2012

JUSTICE K.S.PUTTASWAMY(RETD)& ANR

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln.(s) for interim relief and appln.(s) for impleadment/directions and appln.(s) for impleadment and appln.(s) for impleadment and appln.(s) for impleadment and appln.(s) for impleadment , permission to file addl.documents and permission to file addl.affidavit and Office Report)

WITH T.C.(C) No. 151/2013

(With appln.(s) for modification of court's order and appln.(s) for impleadment as party respondent )

T.C.(C) No. 152/2013

With W.P.(C) No. 829/2013

(With appln.(s) for interim relief and appln.(s) for impleadment/directions and appln.(s) for impleadment and appln.(s) for impleadment and appln.(s) for impleadment and appln.(s) for impleadment and Office Report)

W.P.(C) No. 833/2013

//TRUE & TYPED COPY//

(With appln.(s) for permission to file additional documents and appln.(s) for impleadment and appln.(s) for directions and appln. (s) for impleadment and appln.(s) for impleadment and Office Report)

W.P.(C) No. 932/2013

(With appln.(s) for clarification of court's order and appln.(s) for directions and appln.(s) for interim directions and Office Report)

T.P.(C) No. 312/2014

(With Office Report)

T.P.(C) No. 313/2014

(With Office Report)

W.P.(C) No. 37/2015

(With appln.(s) for permission to file additional documents and appln.(s) for interim stay and appln.(s) for permission to file additional documents and appln.(s) for directions and appln.(s) for impleadment and Office Report)

W.P.(C) No. 220/2015 (With appln.(s) for directions and Office Report)

T.P.(C) No. 921/2015

(With Office Report)

CONMT.PET.(C) No. 144/2014 In W.P.(C) No. 494/2012

(With appln.(s) for directions and appln.(s) for directions and Office Report)

//TRUE & TYPED COPY//

CONMT.PET.(C) No. 470/2015 In W.P.(C) No. 494/2012

(With appln.(s) for exemption from filing O.T. and Office Report)

SLP(Crl) No. 2524/2014

(With Office Report)

CONMT.PET.(C) No. 674/2015 In W.P.(C) No. 829/2013

(With Office Report)

Date : 15/10/2015 These petitions/cases were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE M.Y. EQBAL

HON'BLE MR. JUSTICE C. NAGAPPAN

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) in

WP(C) No. 829/2013 Mr. Shyam Divan, Sr. Adv.

Mr.Pratap Venugopal, Adv.

Ms.Surekha Raman, Adv.

Mr.Anuj Sarma, Adv.

Ms.Niharika, Adv.

Ms.Titisha Mukherjee, Adv.

For M/s. K.J. John & Co., Adv.

WP(C) No. 37/2015 Mr. Gopal Subramaniam, Sr. Adv.

Ms. Aishwarya Bhati, Adv.

//TRUE & TYPED COPY//



Mr. Talha Abdul Rahman, Adv.

Ms. Anusha Ramesh, Adv.

Mr. Prateek Joshi, Adv.

Ms. Neha Meena, Adv.

Mr. Anirban Sen, Adv.

Mr. Adarsh tiwari, Adv.

Mr. T. Gopal, Adv.

Mr. Dinesh, Adv.

WP(C) no. 494/2012 Mr. Soli Sorabjee, Sr. Adv.

Mr. Sanjay Kumar Yadav, Adv.

Mr. Anish Kumar Gupta, Adv.

Mr. Aditya Kumar Dubey, Adv.

Mr. Gaurav Kumar, Adv.

TP(C) No. 151/2013 Mrs. Geetha Kovilan, Adv.

Mr. P.R. Kovilan, Adv. Mr. V.

Vasudevan, Adv.

TP(C) No. 921/2015 Ms. Pinky Anand, ASG

Mr. S.S. Rawat, Adv.

Mr. D.S. Mahra, Adv.

TC(C) No. 152/2013 Ms. Meenakshi Arora, Sr. Adv.

Mr. Rahul Narayan, Adv.

Mr. Mohit Singh, Adv.

Mr. Vijay Kumar, Adv.

Mr. Amit Meharia, Adv.

Mr. Dhritiman Das, Adv.

for M/s. Meharia & Company, Adv.

//TRUE & TYPED COPY//

WP(C) no. 932/2013 Dr. Abhishek Atrey, Adv.

CC(C) no. 470/2015 Mr. Sella Kumar, Adv.

Ms.Nitya Ramakrishnan, Adv.  
Mr.Shadan Farasat, Adv.  
Ms.Guneet Kaur, Adv.  
For Respondent(s) Ms.Rita Singh, Adv.  
Mr.Vaibhav Tiwari, Adv.  
UOI Mr. Mukul Rohatgi, AG  
Ms. Pinky Anand,  
ASG Mr. Ajay  
Sharma, Adv.  
Mr. Zoheb Hossain, Adv.  
Mr.Pravesh Thakur, Adv.  
Mr.Manish Vashistha, Adv.  
Ms.Diksha Rai Adv.  
Ms.Sadhana Sandhu, Adv.  
Mr.Harpreet S.Sandu, Adv.  
Mr.Kaushal Yadav, Adv.  
Mr.A.Sen Gupta,Adv.  
Devanshi Singh, Adv.  
Ms.Binu Tamta Adv.  
Mr.Meenesh Kr.Dubey, Adv.  
Mrs.Anil Katiyar, Adv.  
Mr.D.S.Mahra, Adv.  
Mr.Vakul Sharma, Adv.

//TRUE & TYPED COPY//

	Mr.J.M.Kalia, Adv.
	Mr.Balendu Shekhar, Adv.
	Ms.Somya Rathore, Adv.
	Ms.Kritika Sachdeva, Adv.
	Ms.Saudamini Sharma, Adv.
	Ms.Snibha Mehra, aDv.
	Mr.Karan Seth, Adv.
	Mr.Rishabh Jain, Adv.
	Mr.D.S.Mahra,Adv.
SEBI	Mr.Tushar Mehta, ASG
	Mr.Avinash Tripathi, Adv.
	Mr.Harish Pandey, Adv.
I.A.No.31/2015 in	Dr.Lalit Bhasin, Adv.
W.P.(C)NO.494/12	Mr.Nina Gupta, Adv.
	Mr.Mudit Sharma, Adv.
	Mr.Parvez Khan, Adv.
	Ms.Palak Chadha, Adv.
IA no. 11/2014	Mr. Gopal Sankaranarayanan, Adv.
	Ms. Savita Singh, Adv.
	Ms.Nidhi Bhalla, Adv.
State of Telangana	Mr. S. Udaya Kumar Sagar, Adv. Mr.
	Krishna Kumar Singh, Adv.
RBI	Mr. Jayant Bhushan, Sr. Adv.
	Mr. Kuldeep S. Parihar, Adv.
	Mr. H.S. Parihar, Adv.
State of Goa	Mr. Ninad Laud, Adv.
	Mr. Karan Mathur, Adv.

//TRUE & TYPED COPY//

Mr. Jayant Mohan, Adv.

State of Nagaland Ms. K. Enatoli Sema, Adv.

Mr. Edward Belho, Adv.

Mr. Amit Kumar Singh, Adv.

A&N Administration Mr. K.V. Jagdeshvaran, Adv. Ms.

G. Indira, Adv.

State of Assam Mr. Navnit Kumar, Adv.

Ms. Deepika Ghatowor, Adv.

For M/s. Corporate Law Group, Adv.

State of HP Mr. J.S. Attri, Sr. Adv.

Mr. Suryanarayana Singh, Sr.

AAG Mr. Varinder Kumar Sharma,  
Adv.

Mr. Sumeet Prakash, Adv.

Ms. Pragati Neekhara, Adv.

State of Maharashtra Mr. Nachiketa Joshi, Adv.

Mr. Nishant Katneshwarkar, Adv.

I.A.NO.5/2014 in Mr. Gopal Subramaniam, Sr. Adv.

W.P.(C)NO.833/2013 Mr. Priyadarshi Banerjee, Adv.

Mr. Praveen Sehrawat, Adv.

Mr. Saransh Jain, Adv.

Mr. E.C. Agrawala, Adv.

State of Bihar Mr. Abhinav Mukerji, Adv. Ms.

Bihu Sharma, Adv.

//TRUE & TYPED COPY//

State of AP	Mr. Guntur Prabhakar, Adv. Ms. Perna Singh, Adv.
State of Uttarakhand	Mr. Mukesh Verma, Adv. Mr. Jatinder K. Bhatia, Adv.
State of TN	Mr. B. Balaji, Adv. Mr. R. Rakesh Sharma, Adv. Ms.R.Shase, Adv.
State of W.B.	Mr.Soumitra G.Chaudhuri, Adv. Mr.Parijat Sinha, Adv.
State of Manipur	Mr. Sapam Biswajit Meitei, Adv. Mr. Z.H. Isaac Haiding, Adv. Mr. S. Vijayanand Sharma, Adv. Mr.B.Khusbanshi, Adv. Mr. Ashok Kumar Singh, Adv.
State of Mizoram	Mr. K.N. Madhusoodhanan, Adv. Mr. T.G.N. Nair, Adv.
State of Sikkim	Ms. Aruna Mathur, Adv. Mr.Avnessh Arputham, Adv. Ms.Anuradha Arputham, Adv. For M/s.Arputham Aruna & Co.,Adv.
ECI	Mr. Ashok Desai, Sr. Adv. Mr. S.K. Mendiratta, Adv. Ms. Anu Bindra, Adv. Mr. Mohit D. Ram, Adv.
State of Tripura	Mr. Gopal Singh, Adv. Mr. Rituraj Biswas, Adv.
State of Arunachal	Ms. Varsha Poddar, Adv.

//TRUE & TYPED COPY//

Pradesh	Mr. Anil Shrivastav, Adv. Mr. Rituraj Biswas, Adv.
UT Chandigarh	Ms. Vimla Sinha, Adv. Mr. Gopal Singh, Adv.
State of Kerala	Mr. Jogy Scaria, Adv. Ms. Beena Victor, Adv.
State of Punjab	Mr. Sanchar Anand, AAG Mr. Nishant Bishnoi, Adv. Mr. Apoorv Singhal, Adv. Mr. J.S. Chhabra, Adv. Mr. Kuldip Singh, Adv.
State of Jharkhand	Mr. Ajit Kr. Sinha, Sr. Adv. Mr. Tapes Kumar Singh, Adv. Mr. Mohd. Waquas, Adv.
State of Chhatisgarh	Mr. C.D. Singh, Adv. Ms. Sylona Mohapatara, Adv.
Govt. of Puducherry	Mr. V.G. Pragasam, Adv. Mr. Prabu Ramasubramanian, Adv.
IA No. 5/2014 in WP(C) no. 833/2013	Mr. Praveen Sehwat, Adv. Mr. Priyadarshi Banerjee, Adv. Mr. Nikhil Nayyar, Adv.
State of Karnataka	Ms. Anitha Shenoy, Adv. Ms. Maitreyee Mishra, Adv.

//TRUE & TYPED COPY//

State of WB                      Mr. Soumitra G. Chaudhuri, Adv.

Mr. Anip Sachthey, Adv.

State of Rajasthan            Mr. Nitish Bagri, Adv.

Mr. Divyesh Maheshwari, Adv.

Mr. Ajay Choudhary, Adv.

Mr. Gaurav Chaudhary, Adv.

Ms. Mumtaz Bhalla, Adv.

Mr. Abhay Kumar, Adv.

Mr. Aniruddha P. Mayee, Adv.

I.A. Nos. 9 & 10/2013        Mr. Garvesh

Kabra, Adv.

In WP(C) NO. 494/12        Ms. Pooja Kabra,

Adv.

State of Gujarat                Ms. Hemantika Wahi, Adv.

Ms. Jesal Wahi, Adv.

Ms. Puja Singh, Adv.

Ms. C. K. Sucharita, Adv.

Mr. Kamal Mohan

Gupta, Adv.

Mr. Dinkar Kalra, Adv.

Mr. Amit Sharma, Adv.

//TRUE & TYPED COPY//

State of Haryana Mr.Anil Grover, AAG Mr.Satish  
Kapoor, Adv.  
Mr.Sanjay Kr.Visen,Adv.  
Mr.Samar Vijay Singh, Adv.

State of U.P. Mr.Gaurav Bhatia, AAG  
Mr.Adarsh Upadhyay, Adv.  
Mr.Gaurav Srivastava, Adv.

State of M.P. Mr.Naveen Sharma,adv.  
Ms.Swati Bhushan Sharma, Adv.  
Mr.Mishra Saurabh, Adv.

I.A.No.24 & 25/15 Mr.K.Ramamoorthy, Sr.Adv.

In WP(C)No.494/12 Mr.Dipak K. Nag, Adv.  
Mr.Parmanand Gaur, Adv.  
Ms.Apurva Upamanyu, Adv.

I.A.Nos.22-23/15

In W.P.(C)NO.494/2012 Mr.Sanjay Kapur,Adv.  
Mr.Anmol Chandan, Adv.  
Mr.Anoop J.Bhambani,  
Sr.Adv.  
Dr.Abhishek Attrey, Adv.  
Mr.Ravindra Lakhande, Adv.  
Mr.Sumit Rajora, Adv.

State of H.P. Mr.J.S.Attri, Sr.adv.  
Mr.Suryanarayana Singh, Sr.AAG  
Mr.Varinder Kr.Sharma, Adv.  
Mr.Chandra Nand Jha, Adv.

//TRUE & TYPED COPY//



Intervenor	Mr.Saikrishna Rajagopal, Adv. Mr.Juhen George, Adv. Mr.Arjun Rananathan, Adv.
Pen.Fun.Reg.&D.A.	Mr.R.Sudhinder, Adv. Ms.Ekta Bhasin, Adv. Mr.Ashok Mathur, Adv. Mr.Shiv Mangal Sharma,Adv. Mr.Ankit Shah, Adv. Mr.Puneet Parihar, Adv. Mr.Shrey Kapoor, Adv. Mr.Nishit Agrawal, Adv. Ms.Anjali Chauhan, Adv. Mr.Sitesh Narayan Singh, Adv. Mr.Saurabh Rajpal, Adv. Mr.Avanish Rathi, Adv. Mr.Vivek Ranjan Mohanty, Adv. Mr.Adhiraj Singh Rajawat, Adv.  Mr.Shanti Mukharjee, Adv. Mr.Manoj K.Mishra, Adv. Ms.Shreya Mukharjee, Adv. Mr.Sandeep Kr.Dwivedi, Adv. Mr.Shivam Verma Adv.  Mr.Nikhil Nayyar, Adv.  Mr.Ranjan Mukherjee, Adv.  Ms.Anitha Shenoy, Adv. Ms.Ruchi Kohli, Adv.

//TRUE & TYPED COPY//

Mr.Dinkar Kalra, Adv.

Mr.Mohit D.Ram, Adv.

UPON hearing the counsel the Court made the following

### **ORDER**

All the applications for intervention and impleadment be heard along with the respective main matters.

Application(s) filed by the Union of India/UIDAI is/are disposed of.

Since there is some urgency in the matter, we request the learned Chief Justice of India to constitute a Bench for final hearing of these matters at the earliest.

Ordered accordingly.

(G.V.Ramana) (Vinod Kulvi) AR-cum-PS

Asstt.Registrar

(Signed order is placed on the file)

//TRUE & TYPED COPY//

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (C) NO. 494 OF 2012

JUSTICE K.S. PUTTASWAMY (RETD) ..PETITIONER(S)  
& ANR.

VERSUS

UNION OF INDIA & ORS. .. RESPONDENT(S)

T.C.(C) No. 151/2013

T.C.(C) No. 152/2013

WRIT PETITION(C) No. 829/2013

WRIT PETITION(C) No. 833/2013

WRIT PETITION(C) No. 932/2013

TRANSFER PETITION(C) No. 312/2014

TRANSFER PETITION(C) No. 313/2014

WRIT PETITION(C) No. 37/2015

WRIT PETITION(C) No. 220/2015

TRANSFER PETITION(C) No. 921/2015

CONMT.PET.(C) No. 144/2014

//TRUE & TYPED COPY//

In

WRIT PETITION(C) No. 494/2012

CONMT.PET.(C) No. 470/2015

In

WRIT PETITION(C) No. 494/2012

SPECIAL LEAVE PETITION (CRL.) No. 2524/2014

CONMT.PET.(C) No. 674/2015

In

WRIT PETITION(C) No. 829/2013

**ORDER**

1. This Bench is constituted only for the purpose of deciding the applications filed by the Union of India seeking certain clarification/modification in the orders passed by a Bench of three learned Judges of this Court dated 11.08.2015.
2. We have heard Shri Mukul Rohtagi, learned Attorney General for India, Shri Shyam Divan, Shri Soli Sorabjee and Shri Gopal Subramaniam, learned senior counsels *in extenso*.
3. After hearing the learned Attorney General for India and other learned senior counsels, we are of the view that in paragraph 3 of the Order dated 11.08.2015, if we add, apart from the other two Schemes, namely, P.D.S. Scheme and the L.P.G. Distribution Scheme,

//TRUE & TYPED COPY//

the Schemes like The Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), National Social Assistance Programme (Old Age Pensions, Widow Pensions, Disability Pensions) Prime Minister's Jan Dhan Yojana (PMJDY) and Employees' Provident Fund Organisation (EPFO) for the present, it would not dilute earlier order passed by this Court. Therefore, we now include the aforesaid Schemes apart from the other two Schemes that this Court has permitted in its earlier order dated 11.08.2015.

4. We impress upon the Union of India that it shall strictly follow all the earlier orders passed by this Court commencing from 23.09.2013.
5. We will also make it clear that the Aadhaar card Scheme is purely voluntary and it cannot be made mandatory till the matter is finally decided by this Court one way or the other.
6. All the applications for intervention and impleadment be heard along with the respective main matters.
7. Application(s) for modification/ clarification filed by Union of India/UIDAI is/are disposed of.
8. Since there is some urgency in the matter, we request the learned Chief Justice of India to

constitute a Bench for final hearing of these matters  
at the earliest.

Ordered accordingly.

.....CJI

[ H.L. DATTU ]

.....J.

[M.Y. EQBAL ]

.....J.

[ C. NAGAPPAN ]

.....J.

[ ARUN MISHRA ]

.....J.

[ AMITAVA ROY ]

NEW DELHI,

OCTOBER 15,

2015.



//TRUE & TYPED COPY//

ANNEXURE P/3

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)

PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 439]

नई दिल्ली, बृहस्पतिवार, जून 1, 2017/ज्येष्ठ 11, 1939

No. 439]

NEW DELHI, THURSDAY, JUNE 1, 2017/ JYAISTHA 11, 1939

वित्त मंत्रालय

(राजस्व विभाग)

अधिसूचना

नई दिल्ली, 1 जून, 2017

सा.का.नि. 538(अ).—केन्द्रीय सरकार भारतीय रिजर्व बैंक के परामर्श से धन-शोधन निवारण अधिनियम, 2002 (2003 का 15) की धारा 73 की उप-धारा (2) के खंड (ज), खंड (झ), खंड (ञ) और खंड (ट) के साथ पठित उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए धन-शोधन निवारण (अभिलेखों का अनुरक्षण) नियम, 2005 का और संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात्:—

1. (1) इन नियमों का संक्षिप्त नाम धन-शोधन निवारण (अभिलेखों का अनुरक्षण) दूसरा नियम, 2017 है।

(2) ये राजपत्र में उनके प्रकाशन की तारीख को प्रवृत्त होंगे।

2. धन-शोधन निवारण (अभिलेखों का अनुरक्षण) नियम, 2005 में,—

(क) नियम 2 के उप-नियम (1) में,—

(i) खंड (कक) के पश्चात् निम्नलिखित खंड अन्तःस्थापित किए जाएंगे, अर्थात्:—

‘(कक) “आधार संख्या” से आधार (वित्तीय और अन्य सहायिकियों, फायदों और सेवाओं का लक्ष्यित परिदान), अधिनियम, 2016 की धारा 2 की उप-धारा (क) के अधीन यथा परिभाषित पहचान संख्या अभिप्रेत है;

‘(कख) “अधिप्रमाणन” से आधार (वित्तीय और अन्य सहायिकियों, फायदों और सेवाओं का लक्ष्यित परिदान), अधिनियम, 2016 की धारा 2 की उप-धारा (ग) के अधीन यथा परिभाषित प्रक्रिया अभिप्रेत है;

‘(ककग) “निवासी” से आधार (वित्तीय और अन्य सहायिकियों, फायदों और सेवाओं का लक्ष्यित परिदान), अधिनियम, 2016 की धारा 2 की उप-धारा (फ) के अधीन यथा परिभाषित व्यष्टि अभिप्रेत है;

‘(ककघ) “पहचान सूचना” से आधार (वित्तीय और अन्य सहायिकियों, फायदों और सेवाओं का लक्ष्यित परिदान), अधिनियम, 2016 की धारा 2 की उप-धारा (ढ) के अधीन यथा परिभाषित सूचना अभिप्रेत है;

‘(ककड.) “ई-अपना ग्राहक जानिए अधिप्रमाणन सुविधा” से आधार (अधिप्रमाणन) विनियम, 2016 में यथा परिभाषित अधिप्रमाणन सुविधा अभिप्रेत है;

‘(ककच) “हां/नहीं अधिप्रमाणन सुविधा” से आधार (अधिप्रमाणन) विनियम, 2016 में यथा परिभाषित अधिप्रमाणन सुविधा अभिप्रेत है;

(ii) खंड (घ) के “पासपोर्ट चालन अनुज्ञप्ति” से आरम्भ होने वाले भाग और “विनियामक के परामर्श से” समाप्त होने वाले भाग के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

“पासपोर्ट, चालन अनुज्ञप्ति, भारत निर्वाचन आयोग द्वारा जारी मतदाता पहचान पत्र, राज्य सरकार के किसी अधिकारी द्वारा सम्यक्तः हस्ताक्षित नरेगा द्वारा जारी जॉव कार्ड, राष्ट्रीय जनसंख्या रजिस्टर, जिसमें नाम, पता के ब्यौरे हों या कोई अन्य दस्तावेज, जो विनियामक के परामर्श से केन्द्रीय सरकार द्वारा अधिसूचित किया गया हो, द्वारा जारी पत्र”

(ख) नियम 9 में, उप-नियम (4) से उप-नियम (9) के स्थान पर निम्नलिखित उप-नियम रखे जाएंगे, अर्थात्:—

“(4) जहां ग्राहक कोई ऐसा व्यष्टि है, जो आधार संख्या के लिए नामांकित किए जाने के लिए पात्र है वहां वह उप-नियम (1) के प्रयोजन के लिए रिपोर्ट करने वाले अस्तित्व को, —

(क) भारतीय विशिष्ट पहचान प्राधिकरण द्वारा जारी आधार संख्या; और

(ख) आयकर नियम, 1962 में यथा परिभाषित स्थायी लेखा संख्यांक या प्ररूप संख्या 60,

और ऐसे अन्य दस्तावेज, जिनके अन्तर्गत ग्राहक के कारबार की प्रकृति और वित्तीय प्रास्थिति के सम्बन्ध में दस्तावेज भी हैं, जो रिपोर्ट करने वाले अस्तित्व द्वारा अपेक्षित हों, प्रस्तुत करेगा:

परंतु जहां कोई आधार संख्या ग्राहक को समनुदेशित नहीं की गई है वहां ग्राहक आधार के लिए नामांकन के आवेदन का सबूत देगा और यदि स्थायी लेखा संख्यांक प्रस्तुत नहीं किया जाता है तो ‘शासकीय रूप से विधिमान्य दस्तावेज’ की एक प्रमाणित प्रति प्रस्तुत की जाएगी:

परंतु यह और कि उप-नियम (1) के खंड (ख) के अन्तर्गत आने वाले ग्राहक द्वारा फोटोग्राफ प्रस्तुत किया जाना आवश्यक नहीं है।

(4क) जहां ग्राहक कोई ऐसा व्यष्टि है जो आधार संख्या के लिए नामांकित होने के लिए पात्र नहीं है वहां वह उप-नियम (1) के प्रयोजन के लिए रिपोर्ट करने वाले अस्तित्व को आयकर नियम, 1962 में यथा परिभाषित स्थायी लेखा संख्यांक या प्ररूप संख्यांक 60 प्रस्तुत करेगा:

परंतु यदि ग्राहक स्थायी लेखा संख्यांक प्रस्तुत नहीं करता है तो वह अपनी पहचान और पते के ब्यौरे अन्तर्विष्ट करने वाला ‘शासकीय रूप से विधिमान्य दस्तावेज’ की एक प्रमाणित प्रति, हाल ही में खींचे गए एक फोटोग्राफ की प्रति और ऐसे अन्य दस्तावेज, जिनके अन्तर्गत ग्राहक के कारबार की प्रकृति और वित्तीय प्रास्थिति के सम्बन्ध में दस्तावेज भी हैं, जो रिपोर्ट करने वाले अस्तित्व द्वारा अपेक्षित हों, प्रस्तुत करेगा।

(5) उप-नियम (4) और उप-नियम (4क) में किसी बात के होते हुए भी, कोई व्यष्टि, जो किसी बैंककारी कंपनी में अल्प खाता खोलने की वांछा करता है, स्वतः अनुप्रमाणित फोटोग्राफ के प्रस्तुत किए जाने पर और खाता खोलने के लिए



प्ररूप पर, यथास्थिति, हस्ताक्षर किए हैं या अंगूठा निशान लगाने पर ऐसा खाता खोलने के लिए अनुज्ञात किया जाएगा:

परंतु—

- (i) अल्प खाता खोलते समय बैंककारी कंपनी का कोई पदाभिहीत अधिकारी अपने हस्ताक्षर से यह प्रमाणित करता है कि खाता खोलने वाले व्यक्ति ने उसकी उपस्थिति में, यथास्थिति, अपने हस्ताक्षर किए हैं या अंगूठा निशान लगा दिया है;
- (ii) अल्प खाता मुख्य बैंककारी समाधान सम्बद्ध कंपनी की शाखाओं में या किसी ऐसी शाखा में, जहां इसे शारीरिक रूप से मॉनीटर करना संभव हो, खोला जाएगा और यह सूचित किया जाएगा कि विदेशी प्रेषण अल्प खाते में जमा नहीं किए जाते हैं और ऐसे खातों में संव्यवहारों का मासिक तथा वार्षिक संव्यवहारों का कुलयोग और अतिशेष सम्बन्धी नियत सीमाओं को ऐसे संव्यवहार किए जाने के लिए अनुज्ञात होने से पूर्व भंग नहीं किया जाता है;
- (iii) अल्प खाता आरम्भ में बारह मास की अवधि के लिए और उसके पश्चात् बारह मास की अतिरिक्त अवधि के लिए प्रवर्तनशील रहेगा यदि ऐसा खाता धारक उक्त खाते के खुलने के बारह मास के भीतर शासकीय रूप से विधिमान्य दस्तावेजों में से किसी दस्तावेज के लिए बैंककारी कंपनी के समक्ष आवेदन किए जाने का साक्ष्य चौबीस मास के पश्चात्, उक्त खाते की बाबत पुनर्विलोकन किए जाने वाले सम्पूर्ण शिथिलीकरण विषयक उपबंधों के साथ उपलब्ध कराता है;
- (iv) अल्प खाते को मॉनीटर किया जाएगा और जब धन शोधन या आतंक के वित्त पोषण या अन्य किसी जोखिम दृश्यलेख के बारे में संदेह है तो ग्राहक की पहचान उप-नियम (4) में यथानिर्दिष्ट शासकीय रूप से विधिमान्य दस्तावेजों को उसके प्रस्तुतीकरण के माध्यम से और ग्राहक का आधार संख्या या जहां आधार संख्या ग्राहक को समनुदेशित नहीं किया गया है वहां शासकीय रूप से विधिमान्य दस्तावेज के साथ आधार के लिए नामांकन हेतु आवेदन के सबूत के प्रस्तुतीकरण के माध्यम से साबित की जाएगी;

परंतु यह और कि यदि ग्राहक आधार संख्या के लिए नामांकित होने के लिए पात्र नहीं है तो ग्राहक की पहचान शासकीय रूप से विधिमान्य दस्तावेज के प्रस्तुतीकरण के माध्यम से साबित की जाएगी।

- (v) विदेशी विप्रेषण को अल्प खाते में जमा किए जाने के लिए तब तक अनुज्ञात नहीं किया जाएगा तब तक कि ग्राहक की पहचान उप-नियम (4) में निर्दिष्ट शासकीय रूप से विधिमान्य दस्तावेज के प्रस्तुतीकरण के माध्यम से और ग्राहक की आधार संख्या या जहां आधार संख्या ग्राहक को समनुदेशित नहीं की गई है वहां शासकीय रूप से विधिमान्य दस्तावेज के साथ आधार के लिए नामांकन हेतु आवेदन के सबूत के प्रस्तुतीकरण के माध्यम से पूर्णतः साबित नहीं कर दिया जाता है;

परंतु यह कि यदि ग्राहक आधार संख्या के लिए नामांकित होने के लिए पात्र नहीं है तो ग्राहक की पहचान शासकीय रूप से विधिमान्य दस्तावेज के प्रस्तुतीकरण के माध्यम से साबित की जाएगी।

(6) जहां ग्राहक कंपनी है वहां उप-नियम (1) के प्रयोजनों के लिए वह निम्नलिखित की प्रमाणित प्रतियां रिपोर्ट करने वाले अस्तित्व को प्रस्तुत करेगा: —

- (i) निगमन का प्रमाणपत्र;
- (ii) संगम के ज्ञापन और अनुच्छेद;
- (iii) निदेशक बोर्ड से संकल्प और उसके प्रबंधकों, अधिकारियों या कर्मचारियों को उसकी ओर से संव्यवहार करने के लिए प्रदान किया गया मुख्तारनामा;
- (iv) (क) आधार संख्या;

(ख) आयकर नियम, 1962 में यथा परिभाषित स्थायी लेखा संख्यांक या प्ररूप 60, जो कंपनी की ओर से संव्यवहार करने के लिए किसी मुख्तारनामा रखने वाले प्रबंधकों, अधिकारियों या कर्मचारियों को जारी किया गया है या जहां आधार संख्या समनुदेशित नहीं की गई है वहां आधार के नामांकन हेतु आवेदन का सबूत और यदि स्थायी लेखा संख्यांक प्रस्तुत नहीं किया जाता है तो शासकीय रूप से विधिमान्य दस्तावेज प्रस्तुत किया जाएगा:

परंतु इस खंड के प्रयोजन के लिए, यदि कंपनी की ओर से संव्यवहार करने के लिए मुख्तारनामा रखने वाले प्रबंधक, अधिकारी या या कर्मचारी आधार संख्या के लिए नामांकित किए जाने हेतु पात्र नहीं हैं और वे स्थायी लेखा संख्यांक प्रस्तुत नहीं करते हैं तो शासकीय रूप से विधिमान्य दस्तावेज की प्रमाणित प्रति प्रस्तुत की जाएगी।

(7) जहां ग्राहक भागीदारी फर्म है वहां वह उप-नियम (1) के प्रयोजनों के लिए रिपोर्ट करने वाले अस्तित्व को निम्नलिखित दस्तावेजों की प्रमाणित प्रतियां प्रस्तुत करेगा: —

- (i) रजिस्ट्रीकरण प्रमाण पत्र;
- (ii) भागीदारी विलेख; और
- (iii) (क) आधार संख्या; और

(ख) आयकर नियम, 1962 में यथा परिभाषित स्थायी लेखा संख्यांक या प्ररूप सं. 60, जो उसकी ओर से संव्यवहार करने के लिए मुख्तारनामा रखने वाले व्यक्तियों को जारी किया गया है या जहां आधार संख्या समनुदेशित नहीं की गई है वहां आधार के लिए नामांकन हेतु आवेदन का सबूत और यदि स्थायी लेखा संख्यांक प्रस्तुत नहीं किया जाता है तो शासकीय रूप से विधिमान्य दस्तावेज प्रस्तुत किया जाएगा:

परंतु इस खंड के प्रयोजन के लिए, यदि कंपनी की ओर से संव्यवहार करने के लिए मुख्तारनामा रखने वाला व्यक्ति आधार संख्या के लिए नामांकित किए जाने हेतु पात्र नहीं हैं और वे स्थायी लेखा संख्यांक प्रस्तुत नहीं करता है तो शासकीय रूप से विधिमान्य दस्तावेज की प्रमाणित प्रति प्रस्तुत की जाएगी।

(8) जहां ग्राहक न्यास है वहां वह उप-नियम (1) के प्रयोजनों के लिए रिपोर्ट करने वाले अस्तित्व को निम्नलिखित दस्तावेजों की प्रमाणित प्रतियां प्रस्तुत करेगा: —

- (i) रजिस्ट्रीकरण प्रमाण पत्र;
- (ii) न्यास विलेख; और
- (iii) (क) आधार संख्या; और

(ख) आयकर नियम, 1962 में, यथा परिभाषित स्थायी लेखा संख्यांक या प्ररूप सं. 60, जो उसकी ओर से संव्यवहार करने के लिए मुख्तारनामा रखने वाले व्यक्ति को जारी किया गया है या जहां आधार संख्या समनुदेशित नहीं की गई है वहां आधार के लिए नामांकन हेतु आवेदन का सबूत और यदि स्थायी लेखा संख्यांक प्रस्तुत नहीं किया जाता है तो शासकीय रूप से विधिमान्य दस्तावेज प्रस्तुत किया जाएगा:

परंतु इस खंड के प्रयोजन के लिए, यदि कंपनी की ओर से संव्यवहार करने के लिए मुख्तारनामा रखने वाला व्यक्ति आधार संख्या के लिए नामांकित किए जाने हेतु पात्र नहीं हैं और वह स्थायी लेखा संख्यांक प्रस्तुत नहीं करता है तो शासकीय रूप से विधिमान्य दस्तावेज की प्रमाणित प्रति प्रस्तुत की जाएगी।

(9) जहां ग्राहक कोई अनियमित संगम या व्यष्टियों का निकाय है वहां वह निम्नलिखित दस्तावेजों की प्रमाणित प्रतियां रिपोर्ट करने वाले अस्तित्व को भेजेगा: —

- (i) ऐसे संगम या व्यष्टियों के प्रबंध निकाय का संकल्प;
- (ii) उसकी ओर से संव्यवहार करने के लिए उसे अनुदत्त मुख्तारनामा;
- (iii) (क) आधार संख्या;

(ख) आयकर नियम, 1962 में, यथा परिभाषित स्थायी लेखा संख्यांक या प्ररूप सं. 60, जो उसकी ओर से संव्यवहार करने के लिए मुख्तारनामा रखने वाले व्यक्ति को जारी किया गया है या जहां आधार संख्या समनुदेशित नहीं की गई है वहां आधार के लिए नामांकन हेतु आवेदन का सबूत और यदि स्थायी लेखा संख्यांक प्रस्तुत नहीं किया जाता है तो शासकीय रूप से विधिमान्य दस्तावेज प्रस्तुत किया जाएगा; और

(iv) ऐसी सूचना, जो ऐसे संगम या व्यष्टियों के निकाय के विधिक अस्तित्व को सामूहिक रूप से स्थापित करने के लिए रिपोर्ट करने वाले अस्तित्व द्वारा अपेक्षित हो:

परंतु इस खंड के प्रयोजन के लिए, यदि कंपनी की ओर से संव्यवहार करने के लिए मुख्तारनामा रखने वाला व्यक्ति आधार संख्या के लिए नामांकित किए जाने हेतु पात्र नहीं हैं और वे स्थायी लेखा संख्यांक प्रस्तुत नहीं करता है तो शासकीय रूप से विधिमान्य दस्तावेज की प्रमाणित प्रति प्रस्तुत की जाएगी।

(ग) उप-नियम 14 के पश्चात्, निम्नलिखित उप-नियम अन्तःस्थापित किए जाएंगे, अर्थात्:-

"(15) कोई रिपोर्ट करने वाला अस्तित्व इस नियम के उपबंधों के अधीन आधार संख्या की प्राप्ति के समय, भारतीय विशिष्ट पहचान प्राधिकरण द्वारा प्रदान किए गए या तो ई-अपना ग्राहक जानिए अधिप्रमाणन सुविधा या हां/नहीं अधिप्रमाणन सुविधा का उपयोग करते हुए अधिप्रमाणन करेगा।

"(16) यदि नियम 9 के उप-नियम (4) से उप-नियम (9) में निर्दिष्ट ग्राहक जम्मू-कश्मीर, असम या मेघालय राज्यों का निवासी नहीं है या निवासी है और स्थायी लेखा संख्यांक प्रस्तुत नहीं करता है, ग्राहक शासकीय रूप से विधिमान्य दस्तावेज की प्रमाणित प्रति रिपोर्ट करने वाले अस्तित्व को प्रस्तुत करेगा जिसमें उसकी पहचान तथा पते के ब्यौरे, हाल ही में खींचे गए एक फोटोग्राफ और ऐसे अन्य दस्तावेज, जिनके अन्तर्गत ग्राहक के कारबार की प्रकृति और वित्तीय प्रास्थिति के सम्बन्ध में अन्य दस्तावेज भी हैं, जिनकी रिपोर्ट करने वाले अस्तित्व द्वारा अपेक्षा की जाए।

"(17) (क) यदि ग्राहक आधार के लिए नामांकित किए जाने हेतु पात्र है और नियम 9 के उप-नियम (4) से उप-नियम (9) में निर्दिष्ट स्थायी लेखा संख्यांक प्राप्त करता है, आधार संख्या या स्थायी लेखा संख्यांक रिपोर्ट करने वाले अस्तित्व के साथ सम्बन्ध पर आधारित खाते के प्रारम्भ के समय प्रस्तुत नहीं करता है, ग्राहक खाता आधारित सम्बन्ध के प्रारम्भ की तारीख से छह मास की अवधि के भीतर उसे प्रस्तुत करेगा।"

परंतु आधार के लिए नामांकित किए जाने के लिए पात्र ग्राहक इस अधिसूचना की तारीख से पूर्व रिपोर्ट करने वाले अस्तित्वों के साथ पहले से ही सम्बन्ध आधारित खाता रखते हुए स्थायी लेखा संख्यांक प्राप्त करता है, ग्राहक 31 दिसम्बर, 2017 तक आधार संख्या और स्थायी लेखा संख्यांक प्रस्तुत करेगा।

(ख) आधार (नामांकन और अद्यतन) विनियम, 2016 के विनियम 12 के अनुसार राज्य सरकारों या संघ राज्य क्षेत्रों प्रशासनों में स्थानीय प्राधिकरण आधार नामांकन के लिए भारतीय विशिष्ट पहचान प्राधिकरण रजिस्टार बन गए हैं या बनने की प्रक्रिया में हैं और भारतीय विशिष्ट पहचान प्राधिकरण के परामर्श से सुविधाजनक अवस्थानों पर नामांकन सुविधाएं प्रदान करने के लिए विशेष आधार नामांकन शिविर आयोजित कर रहे हैं और इस नियम में यथा उपबंधित खाता आधारित सम्बन्ध प्रारम्भ करने के इच्छुक कोई भी व्यष्टि, जिसके पास आधार संख्या नहीं है या आधार के लिए नामांकित नहीं कराया है, आधार नामांकन के लिए या भारतीय विशिष्ट पहचान प्राधिकरण के विद्यमान रजिस्टारों के अडोस-पडोस में आधार नामांकन केन्द्रों में से किसी भी केन्द्र पर जा सकता है।

(ग) यदि ग्राहक पूर्वोक्त छह मास की अवधि के भीतर आधार संख्या और स्थायी लेखा संख्यांक प्रस्तुत करने में असफल रहता है तो उक्त खाता ग्राहक द्वारा आधार संख्या और स्थायी लेखा संख्यांक प्रस्तुत किए जाने तक प्रवर्तन में नहीं रहेगा।

(18) यदि नियम 9 के उप-नियम (4) से उप-नियम (9) में निर्दिष्ट ग्राहक द्वारा प्रस्तुत आधार संख्या या स्थायी लेखा संख्यांक से सम्बन्धित पहचान सूचना में ग्राहक का वर्तमान पता नहीं है तो ग्राहक रिपोर्ट करने वाले अस्तित्व को शासकीय रूप से विधिमान्य दस्तावेज प्रस्तुत करेगा।

[अधिसूचना सं. 2/फा. सं. पी. 12011/11/2016-ईएस सेल-डीओआर]

मंदीप कौर, उप-सचिव

टिप्पणः मूल नियम भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (i) सा.का.नि. सं. 444(अ), 1 जुलाई, 2005 द्वारा प्रकाशित किए गए थे और तत्पश्चात् उनमें सा.का.नि. 717(अ), तारीख 13 दिसम्बर, 2005, सा.का.नि. 389(अ), तारीख 24 मई, 2007, सा.का.नि. 816(अ), तारीख 12 नवम्बर, 2009, सा.का.नि. 76(अ), तारीख 12 फरवरी, 2010, सा.का.नि. 508(अ), तारीख 16 जून, 2010, सा.का.नि. 980(अ), तारीख 16 दिसम्बर, 2010, सा.का.नि. 481(अ), तारीख 24 जून, 2011, सा.का.नि. 576(अ), तारीख 27 अगस्त, 2013, सा.का.नि. 288(अ), तारीख 15 अप्रैल, 2015, सा.का.नि. 544(अ), तारीख 7 जुलाई, 2015, सा.का.नि. 693(अ), तारीख 11 सितम्बर, 2015, सा.का.नि. 730(अ), तारीख 22 सितम्बर, 2015, सा.का.नि. 882(अ), तारीख 18 नवम्बर, 2015 और सा.का.नि. 347(अ), तारीख 12 अप्रैल, 2017 द्वारा संशोधन किया गया था।

## MINISTRY OF FINANCE

(Department of Revenue)

### NOTIFICATION

New Delhi, the 1st June, 2017

**G.S.R. 538(E).**—In exercise of the powers conferred by sub-section (1) read with clause (h), clause (i), clause (j) and clause (k) of sub-section (2) of section 73 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government in consultation with the Reserve Bank of India hereby makes the following further amendments to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005. namely:—

1. (1) These rules may be called the Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2017.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, —
  - (a) in rule 2, in sub-rule (1),-
    - (i) after clause (aa), following clauses shall be inserted, namely:—
 

(aaa) "Aadhaar number" means an identification number as defined under sub-section (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016;

(aab) "authentication" means the process as defined under sub-section (c) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016;

(aac) "Resident" means an individual as defined under sub-section (v) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016;

(aad) "identity information" means the information as defined in sub-section (n) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016;

(aae) "e – KYC authentication facility" means an authentication facility as defined in Aadhaar (Authentication) Regulations, 2016;

(aaf) "Yes/No authentication facility" means an authentication facility as defined in Aadhaar (Authentication) Regulations, 2016;'
    - (ii) for clause (d), the portion beginning with "the passport. the driving licence" and ending with "in consultation with the Regulator" the following shall be substituted, namely:—
 

"the passport. the driving licence, the Voter's Identity Card issued by Election Commission of India, job card issued by NREGA duly signed by an officer of the State Government, the letter issued by the National Population

Register containing details of name, address or any other document as notified by the Central Government in consultation with the Regulator”

- (b) in rule 9, for sub-rule (4) to sub-rule (9), the following sub-rules shall be substituted, namely:—

“(4) Where the client is an individual, who is eligible to be enrolled for an Aadhaar number, he shall for the purpose of sub-rule (1) submit to the reporting entity,—

- (a) the Aadhaar number issued by the Unique Identification Authority of India; and
- (b) the Permanent Account Number or Form No. 60 as defined in Income-tax Rules, 1962,

and such other documents including in respect of the nature of business and financial status of the client as may be required by the reporting entity:

Provided that where an Aadhaar number has not been assigned to a client, the client shall furnish proof of application of enrolment for Aadhaar and in case the Permanent Account Number is not submitted, one certified copy of an 'officially valid document' shall be submitted.

Provided further that photograph need not be submitted by a client falling under clause (b) of sub-rule (1).

(4A) Where the client is an individual, who is not eligible to be enrolled for an Aadhaar number, he shall for the purpose of sub-rule (1), submit to the reporting entity, the Permanent Account Number or Form No. 60 as defined in the Income-tax Rules, 1962:

Provided that if the client does not submit the Permanent Account Number, he shall submit one certified copy of an 'officially valid document' containing details of his identity and address, one recent photograph and such other documents including in respect of the nature or business and financial status of the client as may be required by the reporting entity.

- (5) Notwithstanding anything contained in sub-rules (4) and (4A), an individual who desires to open a small account in a banking company may be allowed to open such an account on production of a self-attested photograph and affixation of signature or thumb print, as the case may be, on the form for opening the account:

Provided that-

- (i) the designated officer of the banking company, while opening the small account, certifies under his signature that the person opening the account has affixed his signature or thumb print, as the case may be, in his presence;
- (ii) the small account shall be opened only at Core Banking Solution linked banking company branches or in a branch where it is possible to manually monitor and ensure that foreign remittances are not credited to a small account and that the stipulated limits on monthly and annual aggregate of transactions and balance in such accounts are not breached, before a transaction is allowed to take place;
- (iii) the small account shall remain operational initially for a period of twelve months, and thereafter for a further period of twelve months if the holder of such an account provides evidence before the banking company of having applied for any of the officially valid documents within twelve months of the opening of the said account, with the entire relaxation provisions to be reviewed in respect of the said account after twenty-four months;
- (iv) the small account shall be monitored and when there is suspicion of money laundering or financing of terrorism or other high risk scenarios, the identity of client shall be established through the production of officially valid documents, as referred to in sub-rule (4) and the Aadhaar number of the client or where an Aadhaar number has not been assigned to the client, through the production of proof of application towards enrolment for Aadhaar along with an officially valid document;

Provided further that if the client is not eligible to be enrolled for an Aadhaar number, the identity of client shall be established through the production of an officially valid document;

- (v) the foreign remittance shall not be allowed to be credited into the small account unless the identity of the client is fully established through the production of officially valid documents, as referred to in sub rule (4) and the Aadhaar number of the client or where an Aadhaar number has not been assigned to the client, through the production of proof of application towards enrolment for Aadhaar along with an officially valid document:

Provided that if the client is not eligible to be enrolled for the Aadhaar number, the identity of client shall be established through the production of an officially valid document.

- (6) Where the client is a company, it shall for the purposes of sub-rule (1), submit to the reporting entity the certified copies of the following documents:—

- (i) Certificate of incorporation;
- (ii) Memorandum and Articles of Association;
- (iii) A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf;
- (iv) (a) Aadhaar numbers; and
  - (b) Permanent Account Numbers or Form 60 as defined in the Income-tax Rules, 1962, issued to managers, officers or employees holding an attorney to transact on the company's behalf or where an Aadhaar number has not been assigned, proof of application towards enrolment for Aadhaar and in case Permanent Account Number is not submitted an officially valid document shall be submitted:

Provided that for the purpose of this clause if the managers, officers or employees holding an attorney to transact on the company's behalf are not eligible to be enrolled for Aadhaar number and do not submit the Permanent Account Number, certified copy of an officially valid document shall be submitted.

- (7) Where the client is a partnership firm, it shall, for the purposes of sub-rule (1), submit to the reporting entity the certified copies of the following documents:—

- (i) registration certificate;
- (ii) partnership deed; and
- (iii) (a) Aadhaar number; and
  - (b) Permanent Account Number or Form 60 as defined in the Income-tax Rules, 1962, issued to the person holding an attorney to transact on its behalf or where an Aadhaar number has not been assigned, proof of application towards enrolment for Aadhaar and in case Permanent Account Number is not submitted an officially valid document shall be submitted:

Provided that for the purpose of this clause, if the person holding an attorney to transact on the company's behalf is not eligible to be enrolled for Aadhaar number and does not submit the Permanent Account Number, certified copy of an officially valid document shall be submitted.

- (8) Where the client is a trust, it shall, for the purposes of sub-rule (1) submit to the reporting entity the certified copies of the following documents:—

- (i) registration certificate;
- (ii) trust deed; and
- (iii) (a) Aadhaar number; and
  - (b) Permanent Account Number or Form 60 as defined in the Income-tax Rules, 1962,

issued to the person holding an attorney to transact on its behalf or where Aadhaar number has not been assigned, proof of application towards enrolment for Aadhaar and in case Permanent Account Number is not submitted an officially valid document shall be submitted:

Provided that for the purpose of this clause if the person holding an attorney to transact on the company's behalf is not eligible to be enrolled for Aadhaar number and does not submit the Permanent Account Number, certified copy of an officially valid document shall be submitted.

(9) Where the client is an unincorporated association or a body of individuals, it shall submit to the reporting entity the certified copies of the following documents:—

(i) resolution of the managing body of such association or body of individuals;

(ii) power of attorney granted to him to transact on its behalf;

(iii) (a) the Aadhaar number; and

(b) Permanent Account Number or Form 60 as defined in the Income-tax Rules, 1962,

issued to the person holding, an attorney to transact on its behalf or where Aadhaar number has not been assigned, proof of application towards enrolment for Aadhaar and in case the Permanent Account Number is not submitted an officially valid document shall be submitted; and

(iv) such information as may be required by the reporting entity to collectively establish the legal existence of such an association or body of individuals:

Provided that for the purpose of this clause if the person holding an attorney to transact on the company's behalf is not eligible to be enrolled for Aadhaar number and does not submit the Permanent Account Number, certified copy of an officially valid document shall be submitted.

(c) after sub-rule (14), the following sub-rules shall be inserted, namely,—

“(15) Any reporting entity, at the time of receipt of the Aadhaar number under provisions of this rule, shall carry out authentication using either e-KYC authentication facility or Yes/No authentication facility provided by Unique Identification Authority of India.

(16) In case the client referred to in sub-rules (4) to (9) of rule 9 is not a resident or is a resident in the States of Jammu and Kashmir, Assam or Maghalaya and does not submit the Permanent Account Number, the client shall submit to the reporting entity one certified copy of officially valid document containing details of his identity and address, one recent photograph and such other document including in respect of the nature of business and financial status of the client as may be required by the reporting entity.

(17) (a) In case the client, eligible to be enrolled for Aadhaar and obtain a Permanent Account Number, referred to in sub-rules (4) to (9) of rule 9 does not submit the Aadhaar number or the Permanent Account Number at the time of commencement of an account based relationship with a reporting entity, the client shall submit the same within a period of six months from the date of the commencement of the account based relationship:

Provided that the clients, eligible to be enrolled for Aadhaar and obtain the Permanent Account Number, already having an account based relationship with reporting entities prior to date of this notification, the client shall submit the Aadhaar number and Permanent Account Number by 31<sup>st</sup> December, 2017.

(b) As per regulation 12 of the Aadhaar (Enrolment and Update) Regulations, 2016, the local authorities in the State Governments or Union-territory Administrations have become or are in the process of becoming UIDAI Registrars for Aadhaar enrolment and are organising special Aadhaar enrolment camps at convenient locations for providing enrolment facilities in consultation with UIDAI and any individual desirous of commencing an account based relationship as provided in this rule, who does not possess the Aadhaar number or has not yet enrolled for Aadhaar, may also visit such special Aadhaar enrolment camps for Aadhaar enrolment or any of the Aadhaar enrolment centres in the vicinity with existing registrars of UIDAI.

(c) In case the client fails to submit the Aadhaar number and Permanent Account Number within the aforesaid six months period, the said account shall cease to be operational till the time the Aadhaar number and Permanent Account Number is submitted by the client:

Provided that in case client already having an account based relationship with reporting entities prior to date of this notification fails to submit the Aadhaar number and Permanent Account Number by 31<sup>st</sup> December, 2017, the said account shall cease to be operational till the time the Aadhaar number and Permanent Account Number is submitted by the client.

(18) In case the identity information relating to the Aadhaar number or Permanent Account Number submitted by the client referred to in sub-rules (4) to (9) of rule 9 does not have current address of the client, the client shall submit an officially valid document to the reporting entity.”.

[Notification No.2/F.No. P.12011/11/2016-ES Cell-DOR]

MANDEEP KAUR, Dy. Secy.

**Note :** The principal rules were published in Gazette of India, Extraordinary, Part-II, Section 3, Sub-Section (i) vide number G.S.R. 444(E), dated the 1st July, 2005 and subsequently amended by number G.S.R. 717(E), dated the 13th December, 2005, number G.S.R. 389(E), dated the 24th May, 2007, number G.S.R. 816(E), dated the 12th November, 2009, number G.S.R. 76(E), dated the 12th February, 2010, number G.S.R. 508(E), dated the 16th June, 2010, number G.S.R. 980(E), dated the 16th December, 2010, number G.S.R. 481(E), dated the 24th June, 2011, number G.S.R. 576(E), dated the 27th August, 2013, number G.S.R. 288(E), dated the 15th April, 2015, number G.S.R. 544(E), dated the 7th July, 2015, number G.S.R. 693(E), dated the 11th September, 2015, number G.S.R. 730(E), dated the 22nd September, 2015, number G.S.R. 882 (E), dated the 18th November, 2015 and number G.S.R. 347(E), dated the 12th April, 2017.

RAKESH SUKUL Digitally signed by RAKESH SUKUL  
Date: 2017.06.03 14:53:42 +05'30'

*Handwritten signature*  
P.C



ANNEXURE P/4



भारतीय रिज़र्व बैंक  
RESERVE BANK OF INDIA  
www.rbi.org.in

RBI/DBR/2015-16/18

Master Direction DBR.AML.BC.No.81/14.01.001/2015-16

February 25, 2016

(Updated as on December 08, 2016)

(Updated as on July 08, 2016)

### Master Direction - Know Your Customer (KYC) Direction, 2016

In terms of the provisions of Prevention of Money-Laundering Act, 2002 and the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, Regulated Entities (REs) are required to follow certain customer identification procedure while undertaking a transaction either by establishing an account based relationship or otherwise and monitor their transactions. Accordingly, in exercise of the powers conferred by Sections 35 A of the Banking Regulation Act, 1949 and the Banking Regulation Act (AACS), 1949, read with Section 56 of the Act *ibid* and Rule 9(14) of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 the Reserve Bank of India being satisfied that it is necessary and expedient in the public interest to do so, hereby, issues the Directions hereinafter specified.

## CHAPTER – I

### PRELIMINARY

#### 1. Short Title and Commencement.

- (a) These Directions shall be called the Reserve Bank of India (Know Your Customer (KYC)) Directions, 2016.
- (b) These directions shall come into effect on the day they are placed on the official website of the Reserve Bank of India.

## 2. Applicability

- (a) The provisions of these Directions shall apply to every entity regulated by Reserve Bank of India, more specifically as defined in 3 (b) (xiii) below, except where specifically mentioned otherwise.
- (b) These directions shall also apply to those branches and majority owned subsidiaries of the REs which are located abroad, to the extent they are not contradictory to the local laws in the host country, provided that:
  - i. where local applicable laws and regulations prohibit implementation of these guidelines, the same shall be brought to the notice of the Reserve Bank of India.
  - ii. in case there is a variance in KYC/AML standards prescribed by the Reserve Bank of India and the host country regulators, branches/overseas subsidiaries of REs are required to adopt the more stringent regulation of the two. Branches/subsidiaries of foreign incorporated bank may adopt the stringent regulation of the two i.e. standards prescribed by the Reserve Bank of India and their host country regulators.

Provided this rule shall not apply to 'small accounts' referred to in Section 23 of Chapter VI.

## 3. Definitions

In these Directions, unless the context otherwise requires, the terms herein shall bear the meanings assigned to them below:

- (a) Terms bearing meaning assigned in terms of Prevention of Money-Laundering Act, 2002 and the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005:
  - i. "Act" and "Rules" means the Prevention of Money-Laundering Act, 2002 and the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, respectively and amendments thereto.
  - ii. Beneficial Owner (BO)
    - a. Where the **customer is a company**, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has/have a controlling ownership interest or who exercise control through other means.

*Explanation- For the purpose of this sub-clause-*

1. "Controlling ownership interest" means ownership of/entitlement to more than 25 per cent of the shares or capital or profits of the company.
  2. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.
- b. Where the **customer is a partnership firm**, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has/have ownership of/entitlement to more than 15 per cent of capital or profits of the partnership.
- c. Where the **customer is an unincorporated association or body of individuals**, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has/have ownership of/entitlement to more than 15 per cent of the property or capital or profits of the unincorporated association or body of individuals.
- Explanation: Term 'body of individuals' includes societies. Where no natural person is identified under (a), (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official.*
- d. Where the **customer is a trust**, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with 15% or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- iii. "Central KYC Records Registry" (CKYCR) means an entity defined under Rule 2(1)(aa) of the Rules, to receive, store, safeguard and retrieve the KYC records in digital form of a customer.
  - iv. "Designated Director" means a person designated by the RE to ensure overall compliance with the obligations imposed under chapter IV of the PML Act and the Rules and shall include:-
    - a. the Managing Director or a whole-time Director, duly authorized by the Board of Directors, if the RE is a company,
    - b. the Managing Partner, if the RE is a partnership firm,
    - c. the Proprietor, if the RE is a proprietorship concern,
    - d. the Managing Trustee, if the RE is a trust,

- e. a person or individual, as the case may be, who controls and manages the affairs of the RE, if the RE is an unincorporated association or a body of individuals, and
- f. a person who holds the position of senior management or equivalent designated as a 'Designated Director' in respect of Cooperative Banks and Regional Rural Banks.

*Explanation. - For the purpose of this clause, the terms "Managing Director" and "Whole-time Director" shall have the meaning assigned to them in the Companies Act, 2013.*

- v. "Non-profit organisations" (NPO) means any entity or organisation that is registered as a trust or a society under the Societies Registration Act, 1860 or any similar State legislation or a company registered under Section 8 of the Companies Act, 2013.
- vi. "Officially valid document" (OVD) means the passport, the driving licence, the Permanent Account Number (PAN) Card, the Voter's Identity Card issued by the Election Commission of India, job card issued by NREGA duly signed by an officer of the State Government, letter issued by the Unique Identification Authority of India containing details of name, address and Aadhaar number.

*Explanation: Customers, at their option, shall submit one of the six OVDs for proof of identity and proof of address.*

Provided that where 'simplified measures' are applied for verifying the identity of the customers the following documents shall be deemed to be OVD:

1. identity card with applicant's photograph issued by Central/ State Government Departments, Statutory/ Regulatory Authorities, Public Sector Undertakings, Scheduled Commercial Banks, and Public Financial Institutions;
2. Letter issued by a Gazetted officer, with a duly attested photograph of the person.

Provided further that where 'simplified measures' are applied for verifying, for the limited purpose of, proof of address the following additional documents are deemed to be OVDs :

1. Utility bill, which is not more than two months old, of any service provider (electricity, telephone, post-paid mobile phone, piped gas, water bill);

2. Property or Municipal Tax receipt;
  3. Bank account or Post Office savings bank account statement;
  4. Pension or family Pension Payment Orders (PPOs) issued to retired employees by Government Departments or Public Sector Undertakings, if they contain the address;
  5. Letter of allotment of accommodation from employer issued by State or Central Government departments, statutory or regulatory bodies, public sector undertakings, scheduled commercial banks, financial institutions and listed companies. Similarly, leave and license agreements with such employers allotting official accommodation; and
  6. Documents issued by Government departments of foreign jurisdictions or letter issued by Foreign Embassy or Mission in India.
- vii. "Person" has the same meaning assigned in the Act and includes:
- a. an individual,
  - b. a Hindu undivided family,
  - c. a company,
  - d. a firm,
  - e. an association of persons or a body of individuals, whether incorporated or not,
  - f. every artificial juridical person, not falling within any one of the above persons (a to e), and
  - g. any agency, office or branch owned or controlled by any of the above persons (a to f).
- viii. "Principal Officer" means an officer nominated by the RE, responsible for furnishing information as per rule 8 of the Rules.
- ix. "Suspicious transaction" means a "transaction" as defined below, including an attempted transaction, whether or not made in cash, which, to a person acting in good faith,:
- a. gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved; or
  - b. appears to be made in circumstances of unusual or unjustified complexity; or
  - c. appears to not have economic rationale or *bona-fide* purpose; or

- d. gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism.

*Explanation: Transaction involving financing of the activities relating to terrorism includes transaction involving funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by a terrorist, terrorist organization or those who finance or are attempting to finance terrorism.*

- x. A 'Small Account' means a savings account in which:
  - a. the aggregate of all credits in a financial year does not exceed rupees one lakh;
  - b. the aggregate of all withdrawals and transfers in a month does not exceed rupees ten thousand; and
  - c. the balance at any point of time does not exceed rupees fifty thousand.
- xi. "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery or the arrangement thereof and includes:
  - a. opening of an account;
  - b. deposit, withdrawal, exchange or transfer of funds in whatever currency, whether in cash or by cheque, payment order or other instruments or by electronic or other non-physical means;
  - c. the use of a safety deposit box or any other form of safe deposit;
  - d. entering into any fiduciary relationship;
  - e. any payment made or received, in whole or in part, for any contractual or other legal obligation; or
  - f. establishing or creating a legal person or legal arrangement.
- (b) Terms bearing meaning assigned in this Directions, unless the context otherwise requires, shall bear the meanings assigned to them below:
  - i. "Common Reporting Standards" (CRS) means reporting standards set for implementation of multilateral agreement signed to automatically exchange information based on Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters.
  - ii. "Customer" means a person who is engaged in a financial transaction or activity with a Regulated Entity (RE) and includes a person on whose behalf the person who is engaged in the transaction or activity, is acting.

- iii. "Walk-in Customer" means a person who does not have an account based relationship with the RE, but undertakes transactions with the RE.
- iv. "Customer Due Diligence (CDD)" means identifying and verifying the customer and the beneficial owner using 'Officially Valid Documents' as a 'proof of identity' and a 'proof of address'.
- v. "Customer identification" means undertaking the process of CDD.
- vi. "FATCA" means Foreign Account Tax Compliance Act of the United States of America (USA) which, inter alia, requires foreign financial institutions to report about financial accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers hold a substantial ownership interest.
- vii. "IGA" means Inter Governmental Agreement between the Governments of India and the USA to improve international tax compliance and to implement FATCA of the USA.
- viii. "KYC Templates" means templates prepared to facilitate collating and reporting the KYC data to the CKYCR, for individuals and legal entities.
- ix. "Non-face-to-face customers" means customers who open accounts without visiting the branch/offices of the REs or meeting the officials of REs.
- x. "On-going Due Diligence" means regular monitoring of transactions in accounts to ensure that they are consistent with the customers' profile and source of funds.
- xi. "Periodic Updation" means steps taken to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records at periodicity prescribed by the Reserve Bank.
- xii. "Politically Exposed Persons" (PEPs) are individuals who are or have been entrusted with prominent public functions in a foreign country, e.g., Heads of States/Governments, senior politicians, senior government/judicial/military officers, senior executives of state-owned corporations, important political party officials, etc.
- xiii. "Regulated Entities" (REs) means
  - a. all Scheduled Commercial Banks (SCBs)/ Regional Rural Banks (RRBs)/ Local Area Banks (LABs)/ All Primary (Urban) Co-operative Banks (UCBs) /State and Central Co-operative Banks (StCBs / CCBs) and any other entity

- which has been licenced under Section 22 of Banking Regulation Act, 1949, which as a group shall be referred as 'banks'
- b. All India Financial Institutions (AIFIs)
  - c. All Non-Banking Finance Companies (NBFC)s, Miscellaneous Non-Banking Companies (MNBCs) and Residuary Non-Banking Companies (RNBCs).
  - d. All Payment System Providers (PSPs)/ System Participants (SPs) and Prepaid Payment Instrument Issuers (PPI Issuers)
  - e. All authorised persons (APs) including those who are agents of Money Transfer Service Scheme (MTSS), regulated by the Regulator.
- xiv. "Simplified procedure" means the procedure for undertaking customer due diligence in respect of customers, who are rated as low risk by the RE and who do not possess any of the six officially valid documents, with the alternate documents prescribed under the two provisos of Section 3(a)(vi) of this Directions.
  - xv. "Shell bank" means a bank which is incorporated in a country where it has no physical presence and is unaffiliated to any regulated financial group.
  - xvi. "Wire transfer" means a transaction carried out, directly or through a chain of transfers, on behalf of an originator person (both natural and legal) through a bank by electronic means with a view to making an amount of money available to a beneficiary person at a bank.
  - xvii. "Domestic and cross-border wire transfer": When the originator bank and the beneficiary bank is the same person or different person located in the same country, such a transaction is a domestic wire transfer, and if the 'originator bank' or 'beneficiary bank' is located in different countries such a transaction is cross-border wire transfer.
- (c) All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Banking Regulation Act or the Reserve Bank of India Act, or the Prevention of Money Laundering Act and Prevention of Money Laundering (Maintenance of Records) Rules, any statutory modification or re-enactment thereto or as used in commercial parlance, as the case may be.



## CHAPTER – II

### General

4. There shall be a Know Your Customer (KYC) policy duly approved by the Board of Directors of REs or any committee of the Board to which power has been delegated.
5. The KYC policy shall include following four key elements:
  - (a) Customer Acceptance Policy;
  - (b) Risk Management;
  - (c) Customer Identification Procedures (CIP); and
  - (d) Monitoring of Transactions
6. **Designated Director:**
  - (a) A "Designated Director" shall be nominated by the Board.
  - (b) The name, designation and address of the Designated Director shall be communicated to the FIU-IND.
  - (c) In no case, the Principal Officer shall be nominated as the 'Designated Director'.
7. **Principal Officer:**
  - (a) The Principal Officer shall be responsible for ensuring compliance, monitoring transactions, and sharing and reporting information as required under the law/regulations.
  - (b) The name, designation and address of the Principal Officer shall be communicated to the FIU-IND.
8. **Compliance of KYC policy**

REs shall ensure compliance with KYC Policy through:

  - (a) Specifying as to who constitute 'Senior Management' for the purpose of KYC compliance.
  - (b) Allocation of responsibility for effective implementation of policies and procedures.
  - (c) Independent evaluation of the compliance functions of REs' policies and procedures, including legal and regulatory requirements.

- (d) Concurrent/internal audit system to verify the compliance with KYC/AML policies and procedures.
- (e) Submission of quarterly audit notes and compliance to the Audit Committee.

### **CHAPTER – III**

#### **Customer Acceptance Policy**

9. REs shall frame a Customer Acceptance Policy.
10. Without prejudice to the generality of the aspect that Customer Acceptance Policy may contain, REs shall ensure that :
  - (a) No account is opened in anonymous or fictitious/benami name.
  - (b) No account is opened where the RE is unable to apply appropriate CDD measures, either due to non-cooperation of the customer or non-reliability of the documents/information furnished by the customer.
  - (c) No transaction or account based relationship is undertaken without following the CDD procedure.
  - (d) The mandatory information to be sought for KYC purpose while opening an account and during the periodic updation, is specified.
  - (e) 'Optional'/additional information, is obtained with the explicit consent of the customer after the account is opened.
  - (f) CDD Procedure is followed for all the joint account holders, while opening a joint account.
  - (g) Circumstances in which, a customer is permitted to act on behalf of another person/entity, is clearly spelt out.
  - (h) Suitable system is put in place to ensure that the identity of the customer does not match with any person or entity, whose name appears in the sanctions lists circulated by Reserve Bank of India.
11. Customer Acceptance Policy shall not result in denial of banking/financial facility to members of the general public, especially those, who are financially or socially disadvantaged.

## CHAPTER – IV

### Risk Management

12. For Risk Management, REs shall have a risk based approach which includes the following.

- (a) Customers shall be categorised as low, medium and high risk category, based on the assessment and risk perception of the RE.
- (b) Risk categorisation shall be undertaken based on parameters such as customer's identity, social/financial status, nature of business activity, and information about the clients' business and their location etc. While considering customer's identity, the ability to confirm identity documents through online or other services offered by issuing authorities may also be factored in.

Provided that various other information collected from different categories of customers relating to the perceived risk, is non-intrusive and the same is specified in the KYC policy.

*Explanation: FATF Public Statement, the reports and guidance notes on KYC/AML issued by the Indian Banks Association (IBA), guidance note circulated to all cooperative banks by the RBI etc., may also be used in risk assessment.*

## Chapter V

### Customer Identification Procedure (CIP)

13. REs shall undertake identification of customers in the following cases:

- (a) Commencement of an account-based relationship with the customer.
- (b) Carrying out any international money transfer operations for a person who is not an account holder of the bank.
- (c) When there is a doubt about the authenticity or adequacy of the customer identification data it has obtained.
- (d) Selling third party products as agents, selling their own products, payment of dues of credit cards/sale and reloading of prepaid/travel cards and any other product for more than rupees fifty thousand.
- (e) Carrying out transactions for a non-account based customer, that is a walk-in customer, where the amount involved is equal to or exceeds rupees fifty

thousand, whether conducted as a single transaction or several transactions that appear to be connected.

- (f) When a RE has reason to believe that a customer (account-based or walk-in) is intentionally structuring a transaction into a series of transactions below the threshold of rupees fifty thousand.

**14.** For the purpose of verifying the identity of customers at the time of commencement of an account-based relationship, REs, shall at their option, rely on customer due diligence done by a third party, subject to the following conditions:

- (a) Necessary information of such customers' due diligence carried out by the third party is immediately obtained by REs.
- (b) Adequate steps are taken by REs to satisfy themselves that copies of identification data and other relevant documentation relating to the customer due diligence requirements shall be made available from the third party upon request without delay.
- (c) The third party is regulated, supervised or monitored for, and has measures in place for, compliance with customer due diligence and record-keeping requirements in line with the requirements and obligations under the PML Act.
- (d) The third party shall not be based in a country or jurisdiction assessed as high risk.
- (e) The ultimate responsibility for customer due diligence and undertaking enhanced due diligence measures, as applicable, will be with the RE.

**15.** While undertaking customer identification, REs shall ensure that :

- (a) Decision-making functions of determining compliance with KYC norms shall not be outsourced.
- (b) Introduction shall not be sought while opening accounts.
- (c) The customers shall not be required to furnish an additional OVD, if the OVD submitted by the customer for KYC contains both proof of identity and proof of address.
- (d) A customer shall not be required to furnish separate proof of current address, if it is different from the address recorded in the OVD. In such cases,

the RE shall merely obtain a declaration from the customer indicating the address to which all correspondence will be made by the RE.

- (e) The local address for correspondence, for which their proof of address is not available, shall be verified through 'positive confirmation' such as acknowledgment of receipt of letter, cheque books, ATM cards, telephonic conversation, visits to the place, or the like.
- (f) In case it is observed that the address mentioned as per 'proof of address' has undergone a change, REs shall ensure that fresh proof of address is obtained within a period of six months.

## **Chapter VI**

### **Customer Due Diligence (CDD) Procedure**

#### **Part I - CDD Procedure in case of Individuals**

- 16.** REs shall obtain the following documents from an individual while establishing an account based relationship:
- (a) one certified copy of an OVD as mentioned at Section 3(a)(vi) of Chapter I, containing details of identity and address;
  - (b) one recent photograph; and
  - (c) such other documents pertaining to the nature of business or financial status specified by the RE in their KYC policy.

Provided that information collected from customers for the purpose of opening of account shall be treated as confidential and details thereof shall not be divulged for the purpose of cross selling, or for any other purpose without the express permission of the customer.

*Explanation: Customers, at their option, shall submit one of the six OVDs for proof of identity and proof of address.*

- 17.** The e-KYC service of Unique Identification Authority of India (UIDAI) shall be accepted as a valid process for KYC verification under the PML Rules, as
- (a) the information containing demographic details and photographs made available from UIDAI as a result of e-KYC process is treated as an 'Officially Valid Document', and
  - (b) transfer of KYC data, electronically to the RE from UIDAI, is accepted as valid process for KYC verification.

Provided REs/ Business Correspondents (BCs)/ Business Facilitators (BFs) shall obtain authorisation from the individual user authorising UIDAI by way of explicit consent to release his/her identity/address through biometric authentication to the REs.

Provided further that a RE may provide an option for One Time Pin (OTP) based e-KYC process for on-boarding of customers. Accounts opened in terms of this proviso i.e., using OTP based e-KYC, are subject to the following conditions:

- (i) There must be a specific consent from the customer for authentication through OTP
- (ii) the aggregate balance of all the deposit accounts of the customer shall not exceed rupees one lakh.
- (iii) the aggregate of all credits in a financial year, in all the deposit taken together, shall not exceed rupees two lakh.
- (iv) As regards borrowal accounts, only term loans shall be sanctioned. The aggregate amount of term loans sanctioned shall not exceed rupees sixty thousand in a year.
- (v) Accounts, both deposit and borrowal, opened using OTP based e-KYC shall not be allowed for more than one year within which Customer Due Diligence (CDD) procedure as provided in section 16 or as per the first proviso of Section 17 of the Principal Direction is to be completed. If the CDD procedure is not completed within a year, in respect of deposit accounts, the same shall be closed immediately. In respect of borrowal accounts no further debits shall be allowed.
- (vi) A declaration shall be obtained from the customer to the effect that no other account has been opened nor will be opened using OTP based KYC either with the same RE or with any other RE. Further, while uploading KYC information to CKYCR, REs shall clearly indicate that such accounts are opened using OTP based e-KYC and other REs shall not open accounts based on the KYC information of accounts opened with OTP based e-KYC procedure.
- (vii) REs shall have strict monitoring procedures including systems to generate alerts in case of any non-compliance/violation, to ensure compliance with the above mentioned conditions.

18. REs shall print/download directly, the prospective customer's e-Aadhaar letter from the UIDAI portal, if such a customer knows only his/her Aadhaar number or if the customer carries only a copy of Aadhaar downloaded from a place/source elsewhere, provided, the prospective customer is physically present in the branch of the RE.
19. A copy of the marriage certificate issued by the State Government or Gazette notification indicating change in name together with a certified copy of the 'officially valid document' in the existing name of the person shall be obtained for proof of address and identity, while establishing an account based relationship or while undertaking periodic updation exercise in cases of persons who change their names on account of marriage or otherwise.
20. In case the person who proposes to open an account does not have an OVD as 'proof of address', such person shall provide OVD of the relative as provided at sub-section 77 of Section 2 of the Companies Act, 2013, read with Rule 4 of Companies (Specification of definitions details) Rules, 2014, with whom the person is staying, as the 'proof of address'.
- Explanation: A declaration from the relative that the said person is a relative and is staying with him/her shall be obtained.*
21. In cases where a customer categorised as 'low risk', expresses inability to complete the documentation requirements on account of any reason that the REs consider to be genuine, and where it is essential not to interrupt the normal conduct of business, REs shall, at their option, complete the verification of identity of the customer within a period of six months from the date of establishment of the relationship.
22. In respect of customers who are categorised as 'low risk' and are not able to produce any of the OVDs mentioned at Section 3(a)(vi) of Chapter I and where 'simplified procedure' is applied, REs shall, accept any one document from each of the two additional sets of documents listed under the two provisos of sub-Rule 2(1)(d).

*Explanation: During the periodic review, if the 'low risk' category customer for whom simplified procedure is applied, is re-categorised as 'moderate or "high' risk*

*category, then REs shall obtain one of the six OVDs listed at Section 3(a)(vi) of these Directions for proof of identity and proof of address immediately. In the event such a customer fails to submit such an OVD, REs shall initiate action as envisaged in Section 39 of these Directions.*

**23.** In case an individual customer who does not possess either any of the OVDs or the documents applicable in respect of simplified procedure (as detailed at Section 22 above) and desires to open a bank account, banks shall open a 'Small Account', subject to the following:

- (a) The bank shall obtain a self-attested photograph from the customer.
- (b) The designated officer of the bank certifies under his signature that the person opening the account has affixed his signature or thumb impression in his presence.
- (c) Such accounts are opened only at Core Banking Solution (CBS) linked branches or in a branch where it is possible to manually monitor and ensure that foreign remittances are not credited to the account.
- (d) Banks shall ensure that the stipulated monthly and annual limits on aggregate of transactions and balance requirements in such accounts are not breached, before a transaction is allowed to take place.
- (e) The account shall be monitored and when there is suspicion of money laundering or financing of terrorism activities or other high risk scenarios, the identity of the customer shall be established through the production of "officially valid documents".
- (f) Foreign remittance shall not be allowed to be credited into the account unless the identity of the customer is fully established through the production of "officially valid documents".
- (g) The account remains operational initially for a period of twelve months which can be extended for a further period of twelve months, provided the account holder applies and furnishes evidence of having applied for any of the OVDs during the first twelve months of the opening of the said account.
- (h) The entire relaxation provisions shall be reviewed after twenty four months.

**24. Simplified procedure for opening accounts by Non-Banking Finance Companies (NBFCs):** In case a person who desires to open an account is not